**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**WEST ZONAL BENCH AT MUMBAI**
**COURT NO.**

**Appeal No. E/85788/2017**

(Arising out of Order-in-Appeal No. SK/50/Th-I/2016 dt. 13.12.2016 passed by the Commissioner of Central Excise (Appeals) Mumbai-I )

**Chemetall India Private Ltd.** : **Appellant**

**VS**

**Commissioner of Central Excise, Thane-I** : **Respondent**

**Appearance**

None Appellant

Shri D. S. Chavan, Supdt (A.R) for respondent

**CORAM:**
**Hon'ble Shri M.V. Ravindran, Member (Judicial)**

**Date of hearing : 29/12/2017**
**Date of decision: 29/12/2017**

**ORDER NO. A/92282 / 2017**

***Per : M.V. Ravindran***

This appeal is directed against the Order-in-Appeal No. SK/50/Th-I/2016 dt. 13.12.2016 passed by the Commissioner of Central Excise (Appeals) Mumbai-I.

2. None appeared on behalf of the appellant despite notice. Since the issue lies in a narrow compass the appeal is taken up for disposal even in the absence of any representation.

3. Heard the Ld.AR and perused the records.

4. On perusal of the records it transpires that the issue is regarding refund of pre-deposit made by the appellant herein. In respect of the differential duty demanded from them. Classification of various products was disputed and appellant was directed to

pre-deposit amounts for hearing and disposing the appeals; they succeeded in the appeal before Tribunal and filed an application for refund of the amounts so deposited. I find that there is violation of principles of natural justice as the first appellate authority has disposed of the appeal without addressing the appellants plea as also the adjudicating authority has recorded that the account of differential duty demand and rejected the refund claim. In my considered view, the adjudicating authority needs to reconsider the issue afresh inasmuch as, the application for refund is filed by the appellant in respect of the amount which was directed to be deposited for hearing and disposal of the appeal, the applicability of the Board Circular in such situation needs to be kept in mind by the adjudicating authority and consider the issue holistically as the findings of adjudicating authority are in variance to the reasons mentioned for claiming the refund of the amount. Without expressing any opinion on the merits of the case, keeping all the issues open, the matter is remitted back to the adjudicating authority to reconsider the issue afresh after following the principles of natural justice. The impugned order is set aside and the appeal is allowed by way of remand.

(Pronounced in court)

**(*M.V. Ravindran)***
***Member (Judicial)***

*Sm*