IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/87630/2018

Arising out of:	Order-in-Appeal No.MKK/668/RGD/APP/2017-18 dated 29/03/2018.
Passed by:	Commissioner, Central Tax, Central Excise & Service Tax (Appeals), Raigad.

	Appellants – Represented by:
S S Construction	Shri Kranti Rathi, Advocate
versus	
	Respondent – Represented by:
C.C.E. & S.T, Raigad	Shri Onil Shivdikar, Assistant Commissioner (AR)

Date of hearing: 29/11/2018
Date of decision: 29/11/2018

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Hon'ble Shri Ajay Sharma, Member (Judicial)

ORDER NO: A/88086/2018

The instant Appeal has been filed from the order in Appeal dated 29.03.2018 by which the Commissioner, Central Tax, Central Excise and Service Tax (Appeals), Raigad, dismissed the Appeal filed by the Appellant on the technical ground that the Appellant has not complied with Section 35F of the Central Excise Act, 1944 which requires the pre-deposit of 7.5% of the amount in dispute.

2. The ld. Counsel appearing for the Appellant has submitted that

they have submitted before the Ld. Commissioner (Appeals) that the amount of Rs.79,123 already deposited by them as penalty may be considered as pre-deposit and that they have also submitted the Circular No. 984/08/2014-CX dated 16th December, 2014 which subsequently mentioned that the payment made during the course of investigation prior to the date on which the appeal is filed, to the extent of 7.5% or 10%, subject to the limit of Rs.10,00,00,000/- can be considered to be deposited towards fulfillment of stipulation under Section 35F of the Central Excise Act, 1994. She also submitted that the Appellant has already paid the Service Tax amount of Rs.5,27,486/- with interest of Rs.2,62,104/- and therefore, a total sum of Rs.7,89,591/- as well as the penalty of Rs. 79,123/- has already been paid by the Appellant. But, while going through the impugned order, I find that the ld. Commissioner has not taken into consideration the aforesaid Circular dated 16th September, 2014 while passing the impugned order. The Ld. Authorised Representative appearing for the Revenue reiterated the findings recorded in the impugned order and prayed for the dismissal for the Appeal.

3. After hearing both the sides, without going into the merits of the matter, I think it is proper to remand the matter back to the Ld. Commissioner to decide the above mentioned submissions raised by the Appellant, after taking into consideration the Circular dated 16th September, 2014 and if the ld. Commissioner is satisfied with the

submissions qua pre-deposit as raised by the Appellant, then he must decide the Appeal on merits, after hearing the Appellants on all the issues. The Appeal is, therefore, allowed by way of remand.

(Dictated and Pronounced in Court)

(Ajay Sharma)
Member (Judicial)

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