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

Appeal No. E/86877 & 88052/2018

(Arising out of Order-in-Appeal No. NSK/CEX/000/APPL/163/17-18 dated 08.02.2018 passed by Commissioner of CGST & Central Excise & Service Tax (Appeals), Nasik)

Vridheshwar S.S.K. Ltd. **Appellant**

Vs.

Commissioner of CGST & C. Ex., Nashik II **Respondent**

Appearance:

Shri Sagar Kulkarni, Advocate for appellant
Shri N.N. Prabhudesai, Supdt. (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing & Decision : 05.10.2018

FINAL ORDER NO. **A/88126-88127/2018**

Per: S.K. Mohanty

Heard both sides and perused the records.

2. These appeals are directed against the impugned order dated 08.02.2018 passed by learned Commissioner (Appeals), Central Excise, Nashik. The appeals of the appellants were dismissed by the learned Commissioner (Appeals) on the ground that the conditions prescribed under Section 35F of the Central Excise Act, 1944 have not been complied with inasmuch as the requisite amount has not been pre-deposited for filing of the appeal before the office of the Commissioner (Appeals).

3. Learned Advocate appearing for the appellant submits that due to wrong advice of the earlier Consultant, no pre-deposit was made for filing appeal before the Commissioner (Appeals) and subsequently, the amount as per the requirement of Section 35F of the Act, was deposited for entertaining of appeals both before the Commissioner (Appeals) as well as the Tribunal.

4. Considering the fact that the requirement of Section 35F of the Act has been complied with by the appellant, I am of the view that the appeals can be decided on merits on the basis of the available records. However, I find the Commissioner (Appeals) has not discussed the merits of the case and dismissed the appeals solely on the ground of non-compliance of requirement of Section 35F of the Act. Therefore, I am of the view that the matter should go back to the Commissioner (Appeals) for deciding the appeals afresh on the basis of documents available on records. Needless to say, that opportunity of hearing should be granted to the appellant before deciding the issue afresh.

5. In the result, the appeals are allowed by way of remand.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

nsk