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

Application No. E/ROA/85468/2018 in Appeal No. E/1356/2010

(Arising out of Order-in-Appeal No. AKP/141/NSK/2010 dated 13.05.2010 passed by the Commissioner of Central Excise & Customs (Appeals), Nasik).

M/s S.H. Re-rolling Mills	Appellant

Vs.

Commissioner of Central Excise, Nasik	Respondent

Appearance:

Shri Ashok Singh, Advocate	for Appellant
Shri Sanjay Hasija, Supdt. (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 26.11.2018

Date of Decision: 26.11.2018

ORDER NO. **A/87978 / 2018**

Per: Dr. D.M. Misra

Heard both sides.

2. This miscellaneous application is filed by the appellant seeking direction to the learned Commissioner (Appeals) to dispose of the appeal on merit, since in its earlier order dated 13.5.2010, the appeal was dismissed for non-compliance with the

provisions of Section 35F of the Central Excise Act, 1944 by making appropriate deposit as directed thereunder.

3. Narrating the background, learned Advocate for the appellant submits that aggrieved by the said order, they filed an appeal before this Tribunal and this Tribunal vide the order dated 12.7.2012 remanded the matter to the learned Commissioner (Appeals) to decide the issue afresh on merit subject to deposit of Rs.15.00 lakhs. Since the appellant did not deposit Rs.15.00 lakhs, the matter was dismissed by the learned Commissioner (Appeals) on 12.3.2013. In the meantime, the appellant had challenged the order of the Tribunal dated 12.07.2012 before the Hon'ble Bombay High Court and their appeal was rejected by the Hon'ble High Court on 11.08.2014. Aggrieved by the said order, the appellant filed a SLP before the Hon'ble Supreme Court and the Hon'ble Supreme Court passed the following order: -

> *"Regard being had to the facts and circumstances of the case, while declining to interfere, we are disposed to extend the period till 15.02.2016 to deposit the amount by the petitioner. If the amount is within the stipulated time, the Tribunal shall proceed with the appeal. If the appeal, in the meantime, is dismissed, the same shall stand revived and it shall be decided on merits."*

Pursuant to the Hon'ble Supreme Court's direction, the appellant deposited an amount of Rs.15.00 lakhs on 15.12.2016. Since the appeal has already been disposed of by the learned Commissioner (Appeals), the appellant sought direction for decision of the case on merit by the learned Commissioner (Appeals).

4. Learned AR for the Revenue has no objection.

5. Keeping in view the direction of the Hon'ble Supreme Court, the matter is remanded to the learned Commissioner (Appeals) to decide the issue afresh on merit without insisting any further pre-deposit. Needless to mention that the appellant shall be given reasonable opportunity of hearing to defend their case. All issues are kept open.

6. Miscellaneous application is disposed of.

(Dictated and pronounced in Court)

(S. Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

Sinha