

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

APPEAL NO: ST/85445/2015

[Arising out of Order-in-Appeal No: PUN-EXCUS-003-APP-127-14-15 dated 30th December 2014 passed by the Commissioner of Service Tax (Appeals), Pune.]

For approval and signature:

**Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)**

-
-
1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes
 2. Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
 3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
 4. Whether Order is to be circulated to the Departmental authorities? : Yes
-
-

Ranjana S Nargolkar

... *Appellant*

versus

Commissioner of Central Excise
Pune – II

... *Respondent*

Appearance:

None for appellant

Shri VR Reddy, Assistant Commissioner (AR) and Shri Dilip Shinde, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 17/12/2018
Date of decision: 17/12/2018

ORDER NO: A/88300 / 2018

Per: C J Mathew

On perusal of this appeal against order-in-appeal no. PUN-EXCUS-003-APP-127-14-15 dated 30th December 2014 of Commissioner of Service Tax (Appeals), Pune, it is seen that the impugned order did not entertain challenge of the appellant herein on merit owing to non-compliance with the provisions of section 35F of Central Excise Act, 1944.

2. None appeared for appellant. We have heard Learned Authorised Representative.

3. It is seen from the records that the order of the original authority, received by the appellant on 30th August 2014, was challenged before the first appellate authority on 14th November 2014 but without the mandatory pre-deposit prescribed in section 35F of Central Excise Act, 1944, amended with effect from 6th August 2014, following which notices, proposing rejection of the appeal for this

deficiency, were issued on four different dates between 19th December and 29th December 2014. Though appellant did not appear in response, by communication dated 19th December 2014, it was informed that the prescribed amount, as evidenced by the e-receipts dated 2nd December 2014 and 19th December 2014, was deposited.

4. The first appellate authority interpreted section 35F of Central Excise Act, 1944, and in particular the expression 'entertain', as mandating the pre-deposit before filing of the appeal to be compliant with section 35(1) of Central Excise Act, 1944 that stipulates the period within which appeal is to be filed. The first appellate authority has, therefore, concluded that, even with exercise of power to condone, the appeal should have been filed by 28th November 2014 instead of the effective date of appeal was 2nd December 2014.

5. We find ourselves unable to concur with the view adopted in the impugned order. Filing an appeal, indicating the limitation therein, is provided for in section 35(1) of Central Excise Act, 1944. Beyond that threshold, the sufficiency of an appeal will determine its maintainability for being entertained. Hence, the appeal, having been filed on 14th November 2014, is within the condonable period.

6. The change in law mandating pre-deposit come into place on 6th August, 2014 and, with that change, orders should have included that information in the preamble to enable appellant to comply. This is

absent in the impugned order and it was only by communication dated 9th December 2014 that the appellant was made aware of the deficiency which was made good by them. Upon the matter being taken up for disposal on 30th December, 2014, the requirement of pre-deposit had been complied with and the first appellate authority, even in the absence of the appellant, should have disposed off the matter on merit. Not having done so, we are unable to consider the submissions made in the present appeal. It would, therefore, be appropriate to set aside the impugned order and remit the matter back to the first appellate authority for a proper disposal. Needless to say, the appellant shall be given sufficient opportunity to be heard.

(Pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as1*