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

Appeal No. ST/87681/2018

(Arising out of Order-in-Appeal No. NGP-EXCUS-000-APPL-689-17-18 dated 31.01.2018 passed by the Commissioner of Central Excise & Service Tax (Appeals), Nagpur).

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| M/s Sunny Constructions Bhandara | Appellant |

Vs.

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| Commissioner of Central Excise & CGST, Nagpur | Respondent |

Appearance:

| | |
|---|---|
| None | for Appellant |
| Shri S.K. Hattangadi, AC (AR) | for Respondent |

CORAM:

**HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)**

Date of Hearing: 02.01.2019

Date of Decision: 02.01.2019

ORDER NO. **A/85005 / 2019**

***Per: Dr. D.M. Misra***

None present for the appellant. Heard the learned AR for the Revenue.

2. This is an appeal filed against Order-in-Appeal No. NGP-EXCUS-000-APPL-689-17-18 dated 31.01.2018 passed by the Commissioner of Central Excise & Service Tax (Appeals), Nagpur.

3. The appellant has filed their written arguments and submitted to decide the case on the basis of the same.

4. Learned AR for the Revenue brought to my notice that the appellant has not complied with the provisions of Section 35F of the Central Excise Act, 1944 while filing the appeal before the learned Commissioner (Appeals). Thus the learned Commissioner (Appeals) has dismissed the appeal without considering the merit of the case. The learned AR has further contended that after the order of the learned Commissioner (Appeals), the appellant had deposited 10% of the Service Tax amount while filing the appeal before this forum. He submits that since the issue has not been decided on merit and the appellant has complied with the provisions of Section 35F of the Central Excise Act, 1944, therefore, the matter may be remanded to the Commissioner (Appeals) to decide the issue on merit.

5. I find force in the contention of the learned AR for the Revenue. In the written submissions, the appellant has categorically stated that they had deposited Rs.22,475/- on 08.05.2018, hence, complied with the provisions of Section 35F of the Central Excise Act, 1944. Consequently, since the learned Commissioner (Appeals) has not decided the issue on merit, the impugned order is set aside and the appeal is remanded to the learned Commissioner (Appeals) for deciding the issue on merit without insisting any pre-deposit. Needless to mention a reasonable opportunity of hearing be granted to the appellant. Appeal is allowed by way of remand.

(Dictated and pronounced in the Court)

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

Sinha