CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Appeal No.E/1385/2011

[Arising out of Order-in- Appeal No.P-I/RKS/84/2011, dt.07.06.2011, passed by the CCE (Appeals), Pune]

M/s Sandvik Asia Pvt. Ltd **......Appellant**
Mumbai-Pune Road, Dapoli,
Pune 411 012

VERSUS

CCE, Pune-I **......Respondent**
ICE House, 41-A, Sasoon Rod,
Opp. Wadia College,
Pune 411 001

Appearance:
Shri Rajesh Ostwal, Advocate for the Appellant
Mrs. A.S. Parab, AC (AR) for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.A/86148/2019

Date of Hearing: 19.06.2019
Date of Decision: 19.06.2019

PER: D.M. MISRA

Heard both sides.

2. This appeal is filed against Order-in- Appeal No.P-I/RKS/84/ 2011, dt.07.06.2011, passed by the CCE (Appeals), Pune.

3. At the outset, the learned Advocate for the Appellant submitted that the learned Commissioner has directed to make pre-deposit of Rs.35 lakhs and on non-compliance with the said direction, dismissed the appeal without deciding the case on merit. He submits that this Tribunal has considered their submissions and dispensed with the pre-deposit of the dues, observing a strong prima facie case in favour of the Appellant. He submits that since the issue has not been decided on merit, the matter may be remanded to the Commissioner (Appeals) in view of the judgment of Hon'ble Supreme Court in the case of CCE Chandigarh Vs Smithkline Beecham Co. Health C. Ltd – 2003 (157) ELT 497 (SC).

4. The learned A.R. for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. We find that the learned Commissioner (Appeals) has not decided the issue on merit, but dismissed the appeal for non-compliance with the provisions of Section 35F of Central Excise Act, 1944. Appellant succeeded in making out a prima facie case before this Tribunal. Accordingly, pre-deposit of dues adjudged has been waived. However, since the matter has not been decided on merit by the learned Commissioner (Appeals), following the principle laid down in Smithkline Beecham Co. Health C. Ltd’s case (supra), we remand the matter to the Commissioner (Appeals) to decide the issue afresh on merit without insisting upon any pre-deposit. All issues are kept open.

6. Appeal is allowed by way of remand.

(Operative part of the order pronounced in the open court)

(D.M. Misra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Bahalkar