CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 88134 of 2017

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/333/17-18 dated 25th September 2017 passed by the Commissioner (Appeals), Central Excise & GST, Nagpur.]

Ujjwal Constructions Co Pvt Ltd … ***Appellant***
MJP Premises, Ram Nagpur, Chandrapur

versus

Commissioner of Central Excise, Customs & Service Tax …***Respondent***
Kendriya Utpad Shulka Bhavan, Telangkhedi Road,
Civil Lines, Nagpur– 400 001

APPEARANCE:

Shri DH Nadkarni, Advocate for the appellant

Shri VR Reddy, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A/ 88484 / 2018

DATE OF HEARING: 17/04/2018
DATE OF DECISION: 17/04/2018

M/s Ujjwal Constructions Co Pvt Ltd is in appeal against order-in-appeal no. NGP/EXCUS/000/APPL/333/17-18 dated 25th September 2017 of Commissioner (Appeals), Central Excise & GST, Nagpur which has dismissed their appeal against order of the original authority for failure to comply with the mandatory pre-deposit prescribed in section 35F of the Central Excise Act, 1944. The merit of the contention raised before the first appellate authority had not been considered.

2. The reliance placed by Learned Counsel for the appellant on the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise, Chandigarh v. Smithkline Beecham Co Health C Ltd [2003 (157) ELT 497 (SC)]* may not come to their assistance in the present facts as the law has altered since then by incorporation of mandatory pre-deposit in section 35F of Central Excise Act, 1944. It is seen from the records that the appellant has since discharged liabilities which subsumes the amount payable in compliance with section 35F of the Central Excise Act, 1944 for an appeal to be entertained by the first appellate authority, the matter can now be heard by the first appellate authority on merit.

3. We have heard Learned Authorised Representative.

4. It is not possible for the Tribunal to record a finding on merits tin the absence of any finding on the detriment ordered by the original authority. As the mandatory pre-deposit has now been complied with, we set aside the impugned order and remand the matter back to the first appellate authority to decide the issue on merits

(Pronounced in open court)

(C J Mathew)
Member (Technical)

**/as21052705*