CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Service Tax Appeal No. 86860 of 2018

(Arising out of Order-in-Appeal No. NGP-1/APPL/34 & 35/2017-18 dated 15.02.2018 passed by the Additional Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

M/s Abdul Labour Suppliers ....Appellant
Prop. Harunkhan Mohd. Ali Khan Mohd,
Age Years, Occu: Business,
R/o Katkat Gate, Sariff Colony,
Galli No. 5, Aurangabad.

VERSUS

C.C.E. & S.T., Aurangabad ....Respondent
N-5...Town Centre,, CIDCO,
Aurangabad,, Maharashtra-431030

APPERANCE:

Shri R.K. Khandelwal, Advocate for the Appellant
Shri S.B. Mane, Assistant Commissioner Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85153 / 2020

Date of Hearing: 29.08.2019
Date of Decision: 03.02.2020

PER: AJAY SHARMA

This appeal has been filed from the impugned order dated 15.02.2018 passed by the Additional Commissioner of Central Excise, Customs & Service Tax, Aurangabad in Order-in-Appeal No. NGP-1/APPL/34 & 35/2017-18 by which the learned Commissioner dismissed the Appeal filed by the Appellant without going into the merits of the case as there was non-compliance of Section 35 F of the Central Excise Act, 1944 r/w Section 83 and 85 of the Finance Act, 1994 since the Appellant failed to make a mandatory pre-deposit of 7 ½% of the penalty amount determined in the Adjudication Order.

2. I have been informed by the learned counsel appearing for the Appellant that before this Tribunal the Appellant has complied with the requirement of mandatory pre-deposit and made a total pre-deposit of Rs.1,82,000/- by way of various e-challans, which is 10% of the disputed amount, since it is the mandatory requirement for filing Appeal before the Tribunal. The same was not disputed by the Revenue. I am accordingly entertaining this Appeal and am of the view that since the 1st Appeal was dismissed by the learned Commissioner only on the ground of pre-deposit without going into the merits of the matter therefore justice demands that the Appeal be remanded back to the learned Commissioner (Appeals) to decide the same on merits.

3. Accordingly the Appeal filed by the appellant is allowed by way of remand to the 1st Appellate Authority i.e. the Commissioner (Appeals) with direction to decide the appeal on merits. Needless to mention that a reasonable opportunity of hearing be granted to the appellants. All issues are kept open. Both sides are at liberty to produce evidences in their favour.

(Order pronounced in the open Court on 03.02.2020)

(Ajay Sharma)
Member (Judicial)

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