CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

REGIONAL BENCH – COURT NO.405

Excise Appeal No. 85203 of 2014

(Arising out of Order-in-Appeal No. NSK-EXCUS-000-APP-291-13-14 dated 22.10.2013 passed by the Commissioner of Central Excise & Customs(Appeals), Nashik)

M/s Jai Bharat Steel Rolling Mills ....Appellant
Bhagwati Bunglow Vastu Park
Jachak Nagar Jai Bhawani Road
Nashik Pin Code-422 101
Nasik, Maharashtra

VERSUS

Commissioner of Central Excise ....Respondent
Customs & Service Tax-Nasik
KEndr. Rajaswa Bhawan,

<u>APPERANCE:</u>

Mr. Ashok Singh, Advocate for the Appellant
Miss Anuradha Parab, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/86740/2021

Date of Hearing: 03.09.2021
Date of Decision: 03.09.2021

PER: AJAY SHARMA

This Appeal has been filed impugning the order dated 23/10/2013 by the Commissioner(Appeals) Service Tax and Custom, Nasik, by which the Learned Commissioner rejected the Appeal without going into the merits of the case as the Appellants did not comply with the order dated 04/10/2013 of the Commissioner under

Section 35F of Central Excise Act 1944 directing the mandatory pre-deposit.

2. Before the Tribunal also, despite opportunity given to the Appellant, the Appellant failed to make the pre-deposit, as a result of which this Tribunal vide order dated 11/08/2014 dismissed the Appeal for non-compliance with the direction of pre-deposit under Section 35F *ibid*.

3. The said order was challenged by the Appellant before the Hon'ble High Court of Judicature at Bombay and Hon'ble High Court vide order dated 25/03/2019 in Central Excise Appeal no. 180 of 2018 directed the Appellant to make the pre deposit within a further period of 8 weeks i.e. by 20/05/2019 in order to enable the Appellant to contest the Appeal on merits before the Tribunal. The Hon'ble High Court also directed that if the Appellant failed to deposit the amount within the above stipulated time, the Appeal before this Tribunal would be dismissed. Accordingly, the Appellant had made the requisite pre-deposit on 15/05/2019.

4. Heard Learned Counsel for the Appellant and Learned Authorised Representative for Revenue and perused the case records. Since the Learned Commissioner dismissed the Appeal for non-prosecution without going into the merits of the matter and as the Appellant had now made the pre-deposit, therefore it would be appropriate to remand the matter to the learned Commissioner (Appeals) to dispose of the Appeal on merits. Accordingly, the matter is remanded to Commissioner(Appeals) to decide the Appeal on

merits after giving reasonable opportunity of hearing to the Appellant. The Appeal is therefore allowed by way of remand.

(Order pronounced in the open Court)

(Ajay Sharma)
Member (Judicial)

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