

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Service Tax Appeal No. 86078 of 2016

(Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-123-15-16 dated 29.01.2016 passed by the Commissioner of Service Tax-II (Appeals), Mumbai)

M/s. Zenith (Mumbai) Rollers Pvt. Ltd.

Appellant

Plot No. K-30/2, Addl. Industrial Area, MIDC,
Anand Nagar, Ambernath (E), 421 506,
Maharashtra.

Vs.

Commissioner of Service Tax-II, Mumbai

Respondent

4th floor, New Central Excise Building,
Maharshi Karve Road,
Churchgate, Mumbai 400 020.

Appearance:

Shri Vinay Jain, Advocate, for the Appellant

Shri Dilip Shinde, Assistant Commissioner, Authorised Representative
for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. **A/87030/2021**

Date of Hearing: 29.10.2021

Date of Decision: 29.10.2021

PER: SANJIV SRIVASTAVA

This appeal is directed against Order-in-Appeal No. MUM-SVTAX-002-APP-123-15-16 dated 29.01.2016 passed by the Commissioner of Service Tax-II (Appeals), Mumbai. By the said order, the Commissioner (Appeals) has held as follows:-

"4. However, despite given opportunity to comply with the condition of the stay order, the appellant has neither complied with the stay order nor submitted any confirmation to that effect even after a lapse of 8 days from the date of issue of letter dated 21.01.2016. Thus, it is observed that the appellant herein has failed to pre-deposit the said amount of Rs.10,00,000/- within the stipulated time frame and till date, thereby they have failed to comply with the said stay order and the provisions of

Section 35F of the CEA, 1944 read with Section 83 & 85 of Finance Act, 1994.

5. In view of above, since the appellant has failed to pre-deposit as directed vide the said stay order within the specified time limit, I am constrained to dismiss the appeal filed by the appellant for non-compliance of the stay order in terms of Section 35F of Central Excise Act, 1944 read with Section 83 & 85 of Finance Act, 1994. Consequently, the impugned order is upheld in toto."

2.1 We have heard Shri Vinay Jain, Advocate, for the appellant and Shri Dilip Shinde, Assistant Commissioner, Authorised Representative, for Revenue.

2.2 Arguing for the appellant, learned counsel submits that –

- The Commissioner (Appeals) has in their case passed an ex-parte order on the stay application asking them to deposit Rs.10,00,000/- as this appeal was for the period prior to amendment made in Section 35F in 2014.
- By the impugned order, the Commissioner (Appeals) dismissed the appeal filed by the appellant for non-compliance with the stay order.
- On the merits of the case, the issue is squarely covered in their favour as per following decisions: -
 - Zenith Rollers Ltd. [2014 (33) STR 678
 - Zenith (Bangalore) Rollers Pvt. Ltd. [CESTAT Final Order No. 21238/2015 dated 26.05.2015]
 - Zenith (Bangalore) Rollers Pvt. Ltd. [CESTAT Final Order No. 21912-21916/2015 dated 26.05.2015]
 - Larsen & Toubro Ltd. [2015 TIOL 187 SC].
- The notices for hearing of the stay application were never served upon the appellant due to change of address, even when they had vide their letter dated 06.05.2013 and 31.12.2013 informed the Commissioner (Appeals) about the change in address.
- It is evident from the stay order (para 4) that hearing notices were sent to their old address and were returned

back to the Commissioner (Appeals) by Postal authorities with the remark "Left".

- For filing the appeal, they have complied with the condition of pre-deposit as per Section 35F as amended and that amount is available with the Revenue.
- Taking into account the amount of pre-deposit, the matter may be decided by this Tribunal.

2.3 Learned AR reiterates the findings recorded by the Commissioner (Appeals) and submits that the appellant failed to comply with the stay order passed. Therefore the appeal needs to be dismissed.

3.1 We have considered the impugned order along with the submissions made in the appeal and during the course of argument.

3.2 Para 4 of the stay order passed by the Commissioner (Appeals) is reproduced below:-

"4. A personal hearing was granted for 15.10.2015 vide letter dated 01.10.2015 but the said communication letter was returned undelivered by the postal authority with the remarks "left". Another opportunity was offered on 05.11.2015, which was attempted to be communicated vide this office letter dated 28.10.2015 at another address and a copy marked to jurisdictional authority for service. But the same also returned undelivered with postal remarks "Left". Finally, the new address of Ellpra Silk Mill Compound, Kashimira as appearing in the assessee details on CBEC site was addressed another letter dated 03.11.2015 intimating about another personal hearing fixed for 23.11.2015. No body appeared on behalf of the appellant despite the communication of the letter dated 03.11.2015 and also no request for adjournment received from them. Presuming that the applicant is not much interested in pursuing their stay application/appeal as the change of address was not intimated to this office and also no body appeared for personal hearing despite notice, I do not feel it proper to keep the stay application pending anymore. The applicant shall get another opportunity to defend their case after compliance of the

stay order before final disposal of the appeal. I accordingly proceed to decide the stay application ex-parte on the basis of available records.”

3.3 The observations made by the Commissioner (Appeals) that the appellant has not informed about the change in address cannot be sustained in view of the letters dated 06.05.2013 and 31.12.2013 informing the Commissioner (Appeals) about the change in address. Further, the Commissioner (Appeals) has passed this stay order without taking into consideration the decisions rendered by various authorities in the matter in favour of the appellant. The ex-parte stay order by the Commissioner (Appeals) is passed in violation of the principles of natural justice and cannot be sustained.

3.4 In para 3 of the impugned order, the Commissioner (Appeals) also records as follows:-

“3. The appellant then filed a miscellaneous petition for modification of stay order on various grounds vide letter dated 15.01.2016 (received on 18.01.2016). The said application was duly considered by the undersigned and rejected vide letter dated 21.01.2016. However, considering that the time allowed for compliance of stay order had expired, the appellant was granted further period of one week from 21.01.2016 for compliance of stay order, in order to meet the ends of justice.”

3.5 A perusal of letter dated 21.01.2016 rejecting the modification application also shows that the same was rejected without following the principles of natural justice. Since the orders on both the stay and modification application have been passed without granting any hearing to the appellant, the matter needs to be reconsidered by the Commissioner (Appeals).

3.6 While passing the stay order, the Commissioner (Appeals) should have also taken note of the amended provisions in law with effect from 2014 and could have asked for the pre-deposit as per the amended Section 35F. However, he proceeded to decide the appeal by dismissing the same for non-compliance of

the stay order passed in violation of the principles of natural justice.

3.7 Taking into note the decisions rendered in favour of the appellant as per which they claim they have a very strong case on merits, we are of the view that the matter needs to be considered by an appellate authority on merits.

3.8 For filing the appeal before us, the appellant has complied with the requirement of pre-deposit as per the amended Section 35F. If this compliance made of Section 35F by the appellant is taken into account, we are of the view that necessary compliance can be recorded in terms of Section 35F for hearing the appeal by the Commissioner (Appeals).

4.1 In the result, we allow the appeal filed by the appellant and remand the matter back to the Commissioner (Appeals) for decision on merits without insisting for any further pre-deposit for hearing the appeal in the remand proceedings either in terms of un-amended Section 35F or the amended Section 35F, as amended by Finance Act, 2014.

4.2 Since the matter is quite old, the Commissioner (Appeals) should in remand proceedings decide the matter within three months from the date of receipt of this order.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)