

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

**WEST ZONAL BENCH**

**Excise Appeal No. 87600 of 2019**

(Arising out of Order-in-Appeal No. PVNS/51/APPEALS  
THANE/BW/2019-20 dated 29.05.2019 passed by the Commissioner  
(APPEALS-THANE) GST & CX, MUMBAI)

**Wada Ingots Pvt. Ltd.**

**.....Appellant**

**Shop no. 128, Vindya Commercial Complex  
Plot no.1, Sector 11,  
CBD Belapur, Navi Mumbai**

*VERSUS*

**Commissioner of CGST, Bhiwandi**

**.....Respondent**

**12<sup>th</sup> Floor, Lotus Parel,  
Parel East, Mumbai**

**APPEARANCE:**

Shri Nazir K Shaikh, Advocate for the appellant  
Shri P K Acharya, (AR) for the respondent

**CORAM:**

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

**FINAL ORDER No: A/86009/2023**

DATE OF HEARING : 03.01.2023

DATE OF DECISION : 27.06.2023

**Per: AJAY SHARMA**

This appeal has been filed from the impugned Order-in-Appeal dated 29.05.2019 passed by the Commissioner (Appeals Thane), GST & CX, Mumbai by which the learned Commissioner rejected the appeal on technical ground of non-deposit of

mandatory pre-deposit without going into the merits of the Appeal.

2. I have heard learned counsel for the appellant and learned Authorised Representative for the Revenue and perused the case records including the written submissions placed on record. Learned counsel for the appellant submits that their 1<sup>st</sup> Appeal has been rejected by the learned Commissioner on the ground of not making mandatory pre-deposit amount of 7.5% of duty demanded u/s. 35-F of the Central Excise Act, 1944 which is mandatorily required for filing appeal before the 1<sup>st</sup> Appellate Authority. He further submits that for filing appeal before this Tribunal they have already made mandatory pre-deposit of 10% of the duty demanded against them.

3. Since the appellant has discharged the liability of mandatory pre-deposit as prescribed u/s. 35-F *ibid* which, in my view, is sufficient compliance with Sec.35F *ibid* for an appeal to be decided on merits by the 1<sup>st</sup> Appellate Authority and the same is also supported by the decisions of this Tribunal in the matters of *Ujjwal Constructions Co. Pvt. Ltd. vs. CCE,C & ST, Nagpur; Final Order No. A/88484/2018 dated 17.4.2018* and *Atlantic Bay Shipping Co. vs. Commr.CGST & CE; Final Order No. A/86153/2022 dated 6.12.2022*.

4. Accordingly the impugned order is set aside and the appeal is allowed by way of remand to the Commissioner (Appeals) for deciding the appeal afresh on merits after following

the principle of natural justice and giving a proper opportunity of hearing to the appellant.

(Pronounced in open Court on 27.06.2023)

**(Ajay Sharma)**  
**Member (Judicial)**

//SR