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

REGIONAL BENCH

### Excise Appeal No. 89301 of 2014

[Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/070 to 071/14-15 dated 19.06.2014 passed by the Commissioner of Customs, Excise, Service Tax (Appeals), Nagpur]

**M/s. Trimurti Ispat Ltd.** ........Appellant
**B-26/1, MIDC, Industrial Area,**
**Kalmeshwar, Nagpur-441 501**

*VERSUS*

**Commissioner of Central Excise, Nagpur** ........Respondent
**Telangkhedi Road,**
**Civil Lines, Post Box No. 81,**
**Nagpur – 440 001**

**WITH**

### Excise Appeal No. 89302 of 2014

[Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/070 to 071/14-15 dated 19.06.2014 passed by the Commissioner of Customs, Excise, Service Tax (Appeals), Nagpur]

**Mr. Lalchand Fakirchand Garg** ........Appellant
**(Director of M/s. Trimurti Ispat Ltd.)**
**B-26/1, MIDC, Industrial Area,**
**Kalmeshwar, Nagpur-441 501**

*VERSUS*

**Commissioner of Central Excise, Nagpur** ........Respondent
**Telangkhedi Road,**
**Civil Lines, Post Box No. 81,**
**Nagpur – 440 001**

**APPERANCE:**

Shri Sunil Agarwal, Advocate for the Appellant.
Shri Xavier P.M. Mascarenhas, Superintendent, Authorised Representative for the Respondent.

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**
**HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 87126-87127/2023**

Date of Hearing: 20.10.2023
Date of Decision: 20.10.2023

**PER: BENCH**

Both sides are present.

2. Learned Counsel for the Appellant submits that appeal can be taken up for final disposal in view of the fact that issue concerning demand on the basis of consumption of electricity in manufacturing of steel and induction furnesh has been settled even at the Apex Court level and also in the Appellant's own case by this Tribunal for different periods.

3. Learned Authorised Representative informs that Commissioner (Appeal's) order under challenged indicates that appeal was not heard on merit but was dismissed because of the fact that Appellant failed to make pre-deposit for admission of his appeal and, therefore, there is a requirement of remanding back the appeal for hearing on merit.

4. Learned Counsel for the Appellant Mr. Sunil Agarwal admits that appeal was not disposed of by the Commissioner (Appeals) on merit but in the meantime the director of the Company Mr. Lalchand Garg has expired and the appeal filed by him challenging penalty imposed on him is therefore required to be abated. He undertakes to file the death certificate in the course of day and duly authenticate the same with his attestation.

5. In response to such submissions, Learned Counsel for the Appellant submits that the order for pre-deposit was passed before 2014 where the percentage scheme was not available under Section 35 (F) of the Excise Act, 1994 and by the time they filed appeal before the CESTAT amended provision has already been in force asking 10% pre-deposit for filing appeal before the Tribunal. In furnishing photocopy of Challan evidencing payment of

Rs.82,060/- vide cheque No. 324419 dated 27/08/2014, he submits that this amount meets the requirement of pre-deposit as per the existing law whereas before the Commissioner (Appeals) the pre-deposit percentage being lesser as fixed at 7.5%, amended Procedural law would apply to the existing/pending appear as they have made the requirement of pre-deposit and they have no objection if the appeal is remanded back to the Commissioner for hearing of the same on merit.

6. Having regard to the submissions and fact on record, we are of the view that since the order passed by Commissioner (Appeals) is not in conformity to Section 35A (4), issue in the appeal of Appellant Company bearing No. E/89301/2014 is required to be remanded back to the Commissioner (Appeals) and we do so. We also abate appeal no. E/89302/2014 of the deceased director Late Sunil Agarwal since penalty being personal punishment is no more executable. Hence,

**<u>The Order</u>**

7. Appeal No. E/89301/2014 is allowed by way of remanded to the Commissioner (Appeals) for rehearing since requirement of pre-deposit is made at this end.

Appeal No. E/89302/2014 is abated

(Dictated and pronounced in the open court)

**(Dr. Suvendu Kumar Pati)**
**Member (Judicial)**

**(Anil G. Shakkarwar)**
**Member (Technical)**

*Kajal*