CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH, COURT NO. 4

EXCISE APPEAL NO. 85635 OF 2020

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-190 & 191/2019-20 dated 20.02.2020 passed by the Commissioner (Appeals-I) Central Tax, Pune)

NITIN SCOOTER WORKS
S23 PARVATI INDUSTRIAL ESTATE,
PARVATI NAGAR, NR. ADINATH SOCIETY,
PUNE-411 009
Appellant

Vs.

COMMISSIONER CENTRAL EXCISE & SERVICE TAX, PUNE-I
41-A, ICE HOUSE, SASSOON ROAD,
OPP. WADIA COLLEGE, PUNE-411 001.
Respondent

AND

EXCISE APPEAL NO. 85636 OF 2020

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-190 & 191/2019-20 dated 20.02.2020 passed by the Commissioner (Appeals-I) Central Tax, Pune).

NITIN SCOOTER WORKS
S23 PARVATI INDUSTRIAL ESTATE,
PARVATI NAGAR, NR. ADINATH SOCIETY,
PUNE-411 009
Appellant

Vs.

COMMISSIONER CENTRAL EXCISE & SERVICE TAX, PUNE-I
41-A, ICE HOUSE, SASSOON ROAD,
OPP. WADIA COLLEGE, PUNE-411 001.
Respondent

APPERANCE:

Shri M.P. Joshi, Advocate for the Appellant

Shri Rajiv Ranjan, A.C., Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 85682-85683/2024

Date of Hearing: 10/07/2024
Date of Decision: 10/07/2024

Both sides are present.

2. Learned counsel for the Appellant submits that appeal is filed against erroneous refund of rebate passed by the Commissioner (Appeals) and in view of provision contained in section 35(b) proviso (i), the issue should have been

taken to the Revisional Authority as it requires interpretation of the notification under which rebate is granted but appellant had inadvertently filed these two appeals before the CESTAT which is required to be withdrawn so as to invoke jurisdiction of the Revisional Authority. He further submits that in view of the judgments passed by Hon'ble Apex Court in the case of M.P. Steels appears pending before this Tribunal may be treated as appeal filed before the wrong forum and the same should be condoned to file the appeals before the Divisional authority.

3. Learned Authorised Representative is present. He takes note of the submission. He has no objection to such request for withdrawal.

4. Taking note of submission, I am of the considered view that Appellants should take the ground of limitation before the Divisional authority in showing relied upon judgments which is placed before us as condonation is required to be done at their end but in view of the request made by him to withdraw the appeal, the same is allowed as there is no objection form the opponent against such withdrawal.

5. The appeals are, therefore, dismissed as withdrawn so as to enable the Appellant to file the same before the Divisional Authority. The Appellant is at liberty to take the needful action.

(Operative portion of the order pronounced in open court)

(Dr. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)

(Arti)