

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 5**

**SERVICE TAX MISCELLANEOUS APPLICATION NO. 86869 OF 2025
IN
SERVICE TAX APPEAL NO. 85837 OF 2024**

(Arising out of Order-in-Appeal No. SK/550/Appeals-II/ME/2023-24 dated 12.01.2024 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

**ARUN KUMAR AGARWAL
D-2301 LLOYDS ESTATE,
SALT PAN ROAD, WADALA-EAST,
MUMBAI-400037.**

Appellant

Vs.

**COMMISSIONER CENTRAL GOODS AND SERVICE
TAX -MUMBAI EAST
9TH FLOOR, LOTUS PAREL,
LOTUS INFOCENTRE,
NEAR PAREL STATION, PAREL EAST,
MUMBAI-400012.**

Respondent

Appearance:

Shri Melroy Sutari, C.A. with Ashish Shinde, C.A. present for the Appellant.

Shri Dhananjay Dahiwalé, Dy. Commissioner, Authorised Representative,
present for the Respondent

CORAM:

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

FINAL ORDER NO. A/86895/2025

Date of Hearing : **03.12.2025**

Date of Decision: **03.12.2025**

Miscellaneous application filed for change of Respondent from the present Commissioner to the Commissioner having jurisdiction namely the Commissioner CGST and Central Excise, Mumbai East, inadvertently filed earlier against the quasi-judicial authority, is allowed. Registry to give effect to the change in the cause-title.

2. Appeal is heard from both the sides and taken up for order.
3. Ld. Counsel for the Appellant submits that Ld. Commissioner (Appeals) had not passed the order on merit but dismissed the appeal on the ground that the challan copy for Central Excise and Service Tax payments showing pre-deposit made under Section 35A of the Central Excise Act, 1944, equally applicable to Service Tax matters, had not been filed though transaction confirmation receipt of HSBC Bank was placed on record.
4. Ld. Authorised Representative confirms that order has not been passed on merit.
5. I have gone through the case records and noticed that the challan through which payment is made, is placed on record indicating payment of pre-deposit of Rs. 1,25,815/-. It might not have been placed before the Commissioner (Appeals) who could have called for such deposit proof and completed hearing of the appeal and passed his order in terms of Section 35A(4) of the Central Excise Act 1944 equally applicable to Service Tax appeals in view of operation of Section 85(5) of the Finance Act 1994, in noting the point for determination, the decision thereon and the reasons for such decisions that would have enabled the appellant to challenge the legality of the said order before this forum.
5. I am, therefore, of the considered view that appeal is required to be remanded back to the Commissioner (Appeals) for a *de novo* hearing of the appeal and for passing of order in conformity to Section 35A(4) of the Central Excise Act, applicable to Service Tax appeals also. Hence the order.

The Order

6. The appeal is allowed by way of remand to the Commissioner (Appeals) for *de novo* hearing of the appeal and the Order-in-Appeal No. SK/550/Appeals-II/ME/2023-24 dated 12.01.2024 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai, is hereby set aside.

(Dictated and pronounced in the open court.)

(Dr. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)