CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86079 of 2017

(Arising out of Order-in-Appeal No. KLH-EXCUS-000-APP-175-177-2016-17 dated 06.01.2017 passed by the Commissioner (Appeals-II) of Central Excise & Service Tax, Kolhapur)

M/s Omkar Engineering Company **.... Appellant**
002, Radha Building, Shivashristi Apartment,
Banakhind, Shrirgaon Road, Ratnagiri,
Maharashtra

Versus

Commissioner of CGST & Central Excise, Kolhapur **.... Respondent**
Vasant Plaza,4th & 5th Floor, CS No. 1079/2 KH,
Rajaram Road, Bagal Chowk,
Kolhapur – 416 001

WITH

Service Tax Appeal No. 86089 of 2017

(Arising out of Order-in-Appeal No. KLH-EXCUS-000-APP-175-177-2016-17 dated 06.01.2017 passed by the Commissioner (Appeals-II) of Central Excise & Service Tax, Kolhapur)

M/s Omkar Engineering Company **.... Appellant**
002, Radha Building, Shivashristi Apartment,
Banakhind, Shrirgaon Road, Ratnagiri,
Maharashtra

Versus

Commissioner of CGST & Central Excise, Kolhapur **.... Respondent**
Vasant Plaza,4th & 5th Floor, CS No. 1079/2 KH,
Rajaram Road, Bagal Chowk,
Kolhapur – 416 001

AND

Service Tax Appeal No. 86090 of 2017

(Arising out of Order-in-Appeal No. KLH-EXCUS-000-APP-175-177-2016-17 dated 06.01.2017 passed by the Commissioner (Appeals-II) of Central Excise & Service Tax, Kolhapur)

M/s Omkar Engineering Company **.... Appellant**
002, Radha Building, Shivashristi Apartment,
Banakhind, Shrirgaon Road, Ratnagiri,
Maharashtra

Versus

Commissioner of CGST & Central Excise, Kolhapur **.... Respondent**
Vasant Plaza,4th & 5th Floor, CS No. 1079/2 KH,
Rajaram Road, Bagal Chowk,
Kolhapur – 416 001

APPEARANCE:

Shri Yash Parmar, C.A. for the Appellants

Shri Dhananjay Dahiwale, Authorized Representative for the Respondents

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85887-85889/2026

Date of Hearing: 15.07.2026
Date of Decision: 15.07.2026

PER: S.K. MOHANTY

Heard both sides and perused the case records.

2. These appeals are directed against the common impugned order dated 06.01.2017 passed by the learned Commissioner (Appeals-II), Central Excise & Service Tax, Kolhapur. Vide the impugned order, the appeals filed by the appellant were dismissed on the ground of non-compliance of the requirement of Section 35F of the Central Excise Act, 1944 made applicable to service tax matters in terms of Sections 83 of the Finance Act, 1994.

3. On examination of the case records, we find that the Appeal Nos. 86079/2017; 86089/2017 and 86090/2017 filed by the appellant before the Tribunal relate to the periods 2011-2012 to 2013-2014. In all these appeals, the appellant had made the pre-deposit as per the requirement of Section 35F *ibid*. We have also perused the challans available in the case file evidencing that the appellant had deposited the amounts of Rs.1,02,103/-; Rs.71,843/- and Rs.1,51,105/-, respectively, for the period in dispute covered in three different appeals filed by them. On computing the said amount deposited by them vis-à-vis those confirmed in the adjudication orders, we are of the view that such amount represent exactly 7.5% of the disputed service tax amount. Therefore, the requirement of Section 35F *ibid* has been duly complied with by the appellant and there was no reason or justification on the part of the learned Commissioner (Appeals) in dismissing their appeals on the alleged ground of non-compliance of the requirement of pre-deposit as provided under Section 35F *ibid*.

4. Since, the appeals filed by the appellant before the learned Commissioner (Appeals) were maintainable under Section 85 of the Act of 1994 and that the same were dismissed without discussing the merits of the case, we are of the view that the appeals were required to be disposed of on the basis of merits by the learned Commissioner (Appeals). Therefore, in exercise of the powers conferred under sub-section (1) of Section 35C of the Central Excise Act of 1944 read with sub-section (7) of Section 86 of the Act of 1994, the appeals rejected by the learned Commissioner (Appeals) vide order dated 06.01.2017 are restored back to the original file maintained/available before him. Learned Commissioner (Appeals) is directed to decide the appeals on merits, based on the case file and the documents/records, if any, to be submitted by the appellant at the time of personal hearing. Needless to say, that reasonable opportunity of personal hearing should be granted to the appellant, before deciding the issue(s) afresh.

5. In the result, the appeals are allowed by way of remand.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha