

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

REGIONAL BENCH - COURT No. II

Service Tax Appeal No.70697 of 2024

(Arising out of Order-in-Appeal No.1262/ST/Alld/2023 dated 05/09/2023 passed by Commissioner (Appeals) Central Goods & Services Tax, Allahabad)

M/s Royal Construction and Mining Works,....Appellant

(Near Geeta Mandir, Sec.-8,
Obra, Sonebhadra231219)

VERSUS

Commissioner of Central Excise &

CGST, Allahabad

....Respondent

(38, MG Marg, Civil Lines, Allahabad)

APPEARANCE:

Request for adjournment, for the Appellant

Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70344/2025

DATE OF HEARING : 25 June, 2025
DATE OF DECISION : 25 June, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.1262/ST/Alld/2023 dated 05/09/2023 passed by Commissioner (Appeals) Central Goods & Services Tax, Allahabad. By the impugned order Commissioner (Appeals) has rejected the appeal of the appellant by observing as follows:-

"4.5 Since, the instant appeals have been filed on 25.05.2023, after 06.08.2014, i.e., the date from which the amended Section 35F of the Act came into effect, without complying with the statutory requirement of pre-deposit, when the Commissioner (Appeals) had no jurisdiction to entertain or admit the appeals, I, therefore,

find that this appeal is not maintainable in terms of Section 35F of the Act and in the light of the aforementioned judicial pronouncements.

5. In view of the above, I hold that the present appeal filed by the appellant is not maintainable and as such, the same is rejected.”

2.1 From the above impugned order it is evident that Commissioner (Appeals) has dismissed the appeal of the appellant only for want of mandatory pre-deposit.

3.1 Appellant has requested for adjournment. I have heard Shri Santosh Kumar learned Authorized Representative appearing for the revenue.

3.2 Arguing for the revenue learned Authorised Representative submits that appellant have now complied with the conditions of mandatory pre-deposit i.e. 10% of the disputed amount, as required in terms of Section 35 of the Central Excise Act,1944 for consideration of appeal by the Tribunal.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 Taking the note of the above fact that the impugned order has not passed on merits of the case, the matter needs to be remanded for reconsideration by Commissioner (Appeals) as the appellant has deposited the entire amount required to be deposited as mandatory pre-deposit for consideration of the appeal by this Tribunal i.e. 10% of the disputed amount as prescribed by Section 35F of the Central Excise Act, 1944.

4.3 Since the impugned order do not considers the appeal filed by the appellant on merits, no decision has been rendered on merits by Commissioner (Appeals). Matter needs to be remanded back to the Commissioner (Appeals) for decision on merits.

4.4 I want to make it clear that appellant shall not withdraw any part of the pre-deposited amount or make a claim for any

refund of this amount till the disposal of the appeal by the Commissioner (Appeal) in remand proceedings.

5.1 Appeal is allowed and matter is remanded back to Commissioner (Appeal) for denovo consideration.

5.2 Since the appeal has been quite old, Commissioner (Appeal) is directed to decide the appeal on merits of the case by following the principles of natural justice within three months from the date of receipt of this order.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp