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**(2023) 10 CESTAT CK 0014**

**In the Customs, Excise And Service Tax Appellate Tribunal**

**Case No :** Excise Appeal No.40481, 40482, 40483 Of 2017, 40712, 40713 Of 2019

M/S. Bhayani Plastics India (P) Limited And Others — APPELLANT

Vs

Commissioner Of GST & Central Excise — RESPONDENT

**Date of Decision :** 09-10-2023

**Acts Referred:**
Central Excise Act, 1944 — Section 35F

**Citation :** (2023) 10 CESTAT CK 0014

**Hon'ble Judges :** Sulekha Beevi C.S., Member (J);Vasa Seshagiri Rao, Member (T)

**Bench :** Division Bench

**Advocate :** S. Venkatachalam, M. Ambe

**Final Decision :** Allowed

## Judgement

Sulekha Beevi C.S., Member (J)

1.Brief facts are that appellants were issued show cause notices alleging violation of condition of Notification No.31/2007-CE (NT) date 02.08.2007 as they had not submitted CT-1 certificate as required by the notification. After due process of law, the original authority confirmed the demand along with interest and imposed penalty. Against such orders, the appellant filed appeals before the Commissioner (Appeals) who vide order impugned herein held that the appellant has not complied with the predeposit and dismissed the appeals on technical grounds without going into the merits of the case. The appellant is thus before the Tribunal.

2. Ld. Counsel Sri S. Venkatachalam appeared and argued for the appellant. It is submitted by the learned counsel that the appellant has to pay 7.5% of the duty demand while filing the appeals before the Commissioner (Appeals). Accordingly, the appellant had debited in their cenvat account the amount that has to be predeposited. However, the Commissioner (Appeals) refuses to take note of this

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fact and has dismissed the appeal for non-compliance of predepsoit. It is prayed that the appeals may be allowed.

3. Ld. A.R Sri M. Ambe supported the findings in the impugned order.

4. Heard both sides.

5. The instant appeals are filed against dismissal of appeals by Commissioner (Appeals) for non-compliance of predeposit. In para-2 of the order impugned in Appeal E/40481/2017, it is seen that appellant has debited their cenvat account towards making the predeposit as required under Section 35F of Central Excise Act, 1944. However, the Commissioner (Appeals) has failed to consider this as sufficient compliance of predeposit. We take note of the fact that when there is debit in the cenvat account towards the compliance of the mandatory predeposit, the same has to be accepted as compliance as required under Section 35F of the Act ibid. For these reasons, the matter is remanded to the Commissioner (Appeals) who is directed to hear the appeals on merits without insisting for further predeposit. The impugned order is set aside. The appeals are allowed by remand to Commissioner (Appeals).

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