(2024) 06 CESTAT CK 0008

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 55689 Of 2023

M/s Jetha Ram Mali — APPELLANT

Vs

Commissioner Of Central Goods, Service Tax And Central Excise — RESPONDENT

Date of Decision : 06-06-2024

Acts Referred:
Central Excise Act, 1944 — Section 35, 35F
Finance Act, 1944 — Section 83

Citation : (2024) 06 CESTAT CK 0008

Hon'ble Judges : Hemambika R. Priya, Member (T)

Bench : Single Bench

Advocate : Kuldeep Rawat

Final Decision : Dismissed

Judgement

Hemambika R. Priya Member (T)

1.The present appeal is filed by Shri Jetha Ram Mali (herein after referred to appellant) against the Order-in-Appeal No. 111(AK)ST/JDR/2023 dated 03.05.2023 against rejection of his appeal due to non-compliance of mandatory pre-deposit in terms of Section 35F of the Central Excise Act, 1944 readwith Section 83 of the Finance Act, 1944.

2. The brief facts of the case are that the appellant was asked to submit details of services rendered by them alongwith the copies of Form 26AS, Balance Sheet, Trading Account and Profit and Loss Account and Service Tax Returns for the period from 2014-15 to 2016- 17 till June 2017 by the jurisdiction officer. The documents were examined and thereafter, the Department issued a show cause notice asking the appellant why service tax amounting to Rs. 11,27,843/-should not be demanded alongwith interest and penalty. The said demand was confirmed by the original adjudicating authority vide Order-in-Original No. 88/2021-ST dated 08.12.2021. Against this order, the appellant filed an appeal before the Commissioner (Appeals) wherein the appellant had deposited Rs.

84,590/- as pre-deposit for filing of appeal through DRC-03 dated 12.04.2023. The Commissioner (Appeals) without going into the merits of the case, dismissed the appeal of the appellant due to non-compliance of mandatory pre-deposit. The present appeal is against the impugned order.

3. No one has appeared on behalf of the appellant. However, written submissions were received mentioning that the Commissioner (Appeals) did not afford proper opportunity for depositing of Pre-deposit amount of appeal. It has also been submitted that the authority had rejected the appeal on the ground that pre-deposit was not made thru CBIC-GST integrated portal as per circular no. 1070/3/2019-CXd dated 24.06.2019 whereas pre-deposit had been made through GST DRC-03 form. It has been submitted that the appellant was ready to deposit pre-deposit thru CBIC-GST, in addition to pre-deposit made thru GST DRC-03 form but this request was not considered.

4. Learned Authorized Representative for the Department submitted that this issue was no more res-integra and submitted that this Tribunal in the case of Army Welfare Housing Organisation vs. Commissioner of Central Goods, Service Tax, Delhi South Defect Misc. Order No. 50-51/2024 dated 13.03.2024 and M/s South Eastern Coalfields Limited vs. Principal Commissioner of CGST, Customs and Central Excise Order dated 10.05.2024 has held that the payment made through DRC-03 is not permissible under Section 35F of Central Excise Act, 1944.

5. Heard both sides and perused the case records.

6. I note that the Principal Bench of the Tribunal in the following cases had held that the payment made through DRC-03 is not permissible under Section 35F.

• Tina Rubber & Infrastructure Limited vs. Commissioner of Central Excise and Central Goods, Service Tax, Delhi South in Service Tax Defect Diary No. 51243 of 2023 dated January 22, 2024

• TPL Plastech Limited vs. Commissioner of Central Excise and Central Goods, Service Tax, Dehradun in Excise Defect Diary No. 50087 of 2023 dated January 22, 2024

• Indra Deve Chhabra vs. Commissioner of Central Excise and Central Goods, Service Tax, Jabalpur in Service Tax Defect Diary No. 51741 of 2023 dated January 22, 2024

• Arit Hotel Private Limited vs. Commissioner of Central Excise & Central Goods, Service Tax, Delhi-I in Defect Diary No. 50134 of 2023 dated January 15, 2024

7. In addition, the Tribunal in the case of Army Welfare Housing Organisation has observed that there is no provision of using DRC-03 for the purpose of pre-deposit.

8. I do not find any merit in the submissions made on behalf of the appellant. Further, I hold that the CBIC Circular dated 28.10.2022 specifically clarifies the pre-deposit payment method for cases pertaining to Central Excise and Finance

Act, 1994. The deposit made by the appellant towards pre-deposit under Section 35 of Central Excise Act, 1944 by way of DRC-03 cannot be accepted.

9. As regards the contention that they made a request that they will make the pre-deposit as per the circular, I hold that the CBIC Circular dated 18.04.2023 categorically states that payment of pre-deposit under DRC-03 is not acceptable. Further, the appellant was at liberty to make the pre-deposit as per the CBIC Circular instead of merely claiming that he was willing to make. The appellant did not follow through his claim.

9. In view of the above, I find no infirmity in the impugned order and the same is upheld. Appeal is dismissed.

