

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE

TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/75914/16

(Arising out of Order-in-Appeal No.09/HAL/2016 dated 15.02.2016 passed by the Commissioner(Appeal-I) of Central Excise, Kolkata.)

M/s.Manaksia Ltd.

Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise, Haldia

Respondent (s)

Appearance:

Shri S.P.Siddhanta, Consultant for the Appellant

Shri S.Mukhopadhyay, Supdt.(AR) for the Revenue

CORAM:

Honble Shri P.K.Choudhary, Member(Judicial)

Date of Hearing/Decision :- 08.03.2017

ORDER NO.FO/A/75212/2017

Per Shri P.K.Choudhary

This appeal has been filed by the appellant against Order-in-Appeal No. 09/HAL/2016 dated 15.02.2016 passed by the Commissioner(Appeal-I) of Central Excise, Kolkata.

2. Vide the impugned Order, inter alia, the first Appellate Authority has disposed of all the appeals filed by the appellants on the ground that mandatory deposit of duty required to be made under Section 35F (i) of the Central Excise Act, 1944 has been paid from the CENVAT Account maintained by the appellants.

3. Shri S.P.Siddhanta, Consultant appeared for the appellant. It is his case that there is no bar in amended Section 35F of the Central Excise Act, 1944, that the deposit has to be made in cash only and not from CENVAT Credit Account.

4. Shri S.Mukhopadhyay, Supdt.(A.R.) appeared on behalf of the Revenue and reiterated the findings given by the First Appellate Authority.

5. Heard both sides and perused the case records. The issue involved in the present proceedings is whether mandatory deposit of seven and half percent as per Section 35F (i) of the Central Excise Act 1944, is required to be paid in cash or the same can be paid from CENVAT Credit Account maintained by the appellant. Relevant Section is reproduced below:

SECTION 35F. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal-
The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal-

(i) under sub-section (1) of section 35, unless the appellant has deposited seven and a half per cent. Of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the [Principal Commissioner of Central Excise or Commissioner of Central Excise

5.1 It is observed from the above provisions that it is not specifically mentioned that amount has to be deposited only by way of cash payment. First Appellate Authority in para 3.1 of Order-in-Appeal dated 15/2/2016 has discussed Rule 3 (4) of the CENVAT Credit Rules, 2004 indicating the situation

where CENVAT Credit can be utilised. In a case of dispute about admissibility of CENVAT Credit, ultimate action against an assessee, if found to be inadmissible to CENVAT Credit, will be to reverse CENVAT Credit taken. In such a case there may not be any need to make pre deposit in cash. Similarly, in the case of demand of duty, if CENVAT Credit is permissible for payment of tax, the same can always be debited from CENVAT Account of an assessee. As per procedure followed by CESTAT Registry at Kolkata, payments made from CENVAT Credit Account are considered as due payments for considering as deposit under Section 35F (ii) and (iii) of Central Excise Act, 1944. First appellate authority could have a view if debit of mandatory deposit was with respect to personal penalty or payment of interest.

6. In view of the above observations, the view taken by the First Appellate Authority, that deposit under Section 35F (i) cannot be made from CENVAT Credit Account, is not the correct appreciation of law so long as the CENVAT Credit is permissible for utilisation as per Rule 3(4) of the CENVAT Credit Rules, 2004. Accordingly, appeal filed by the appellant is allowed by way of remand to the Id.Commissioner(Appeals) to decide the appeal on merits without insisting on any further pre-deposit. All issues are kept open. Appellant be granted adequate opportunity of hearing to present their case. Both sides are at liberty to produce evidences in their favour.

Appeal is allowed by way of remand.

(Operative part of the order was pronounced in the open court.)

SD/

(P.K.CHOUDHARY)

MEMBER(JUDICIAL)