Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 12076 of 2017– DB

(Arising out of OIA-VAD-EXCUS-003-APP-126-2017-18 dated 06/06/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Swami Nana Exchange Pvt Ltd **........Appellant**
6, Cosmo Villa Akik Coop Hsgsoc
Near Amulgarden Opp. Satyagraha Chavni
Premchand Nagar Road Bodakdev,
AHMEDABAD, GUJARAT

VERSUS

COMMISSIONER OF CGST & CENTRAL EXCISE - CGST & Central Excise Vadodara I **......Respondent**
Central GST Building,
Race Course Circle,
Vadodara, Gujarat-390007

APPEARANCE:
Shri H D Dave, Advocate for the Appellant
Shri P Ganesan, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

Final Order No. 10041/2025

DATE OF HEARING/DECISION: 21.01.2025

C L MAHAR

The brief facts of the matter are that the appellant is a private limited company and engaged in the business of 'Money Changer'. A show cause notice dated 23.10.2013 was issued to the appellant for short payment of the service tax amounting of Rs. 12,21,868/- under Section 73(1) of the Finance Act, 1994. The show cause notice has also invoked the provisions pertaining to charging of the appropriate interest under Section 75 of the Finance Act, 1994 as well as the Penal Provisions of the Sections 76,77 & 78 have also been invoked in the show cause notice. The matter was adjudicated by the Learned Deputy Commissioner vide it Order-In-Original dated 27.11.2015. Feeling aggrieved of the order of the Deputy Commissioner, the appellant has approached the office of Commissioner (Appeals). At the time of filing the first appeal, the learned Advocate has claimed that they have deposited the mandatory pre-deposit of the 7.5% of the duty demand vide Challan No. 33719 dated 05.02.2016. The Learned Commissioner (Appeals) in their first Order-In-Appeal dated 16.05.2016 has remanded back the matter for readjudication to the original adjudicating authority. Against this order the appellant has again approached the office of the Commissioner (Appeals). The Commissioner (Appeals) vide its order No. VAD-EXCUS-003-APP-126/2107-18 dated 06.06.2017 as held as follows: -

> *"5.2 Before venturing into the subject I find that, the appellant had not deposited the mandatory pre-deposit @ 7.5% of duty or penalty involved in respect of appeal and sought waiver of same. Finance Act (No.2), 2014 ("the Finance Act") has substituted new Section 35F of the Central Excise Act, 1944 ("the Excise Act") which is also applicable for Service Tax vide Section 83 of the Finance Act, 1994 and Section 129E of the Customs Act, 1962 ("the Customs Act") to prescribe mandatory pre- deposit of 7.5% or 10% for first stage or second stage appeal, of duty demanded where duty demanded is in dispute or where duty demanded and penalty levied are in dispute and where penalty alone is in dispute, the pre-deposit shall be calculated on the penalty imposed. The said amendments have become applicable for the appeals to be filed after August 6, 2014. In the instant case the appellant has failed to deposit the mandatory pre-deposit of 7.5% of duty demanded or duty demanded and penalty levied are in dispute. Moreover, I find that the appellant had in fact mislead this Office into accepting their appeal memo submitted on 16.03.2017 by enclosing the copy of GAR 7-Payment Acknowledgement issued by the bank concerned more than a year. (Payment Ref No 17364773 realised on 05.02.2016). Further on verification from the records, it has also been revealed that this is the same copy of GAR 7 dt 05.02.2016 that the appellant had attached with their earlier Appeal Memo filed in February 2016 in connection with earlier OIO dt 27.11.2015 and disposed vide OIA No 110 dt 16.05.2016 which is highly objectionable. Further, such conduct on the part of appellant is nothing short of deceit and requires being condemned in the strongest language.*
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> *6. Thus the present appeal is not maintainable on account of nonpayment of pre- deposit in terms of Section 35 of the Central Excise Act, 1944."*

2. The Learned Advocate has contended that the Commissioner (Appeals) has not considered the fact that mandatory pre-deposit which they have made vide Challan No. 33719 dated 05.02.2016 still remain with the department and the appellant has not sought any refund of the same. The Commissioner (Appeals) has failed to consider this very fact, while dismissing the appeal of the appellant, we are of the view that the pre-deposit condition has been fulfilled by the appellant as the pre-deposit challan which have been submitted at the time of the first filing of the first appeal is still remains valid and as per the Learned Advocate the deposit made there under still remain with the Department. The adjudicating again confirmed all the charges as invoked in the impugned show cause notice, after order was sent for de-novo adjudication and same should have been considered by the Commissioner

(Appeals) while admitting the appeal of the appellant. We therefore of the view that the matter needs to be remanded back to the Commissioner (Appeals), with the direction to consider the Challan No. 33719 dated 05.02.2016 as a deposit of the mandatory pre-deposit and after due verification and decide the matter on merit afresh.

(Dictated and pronounced in open Court)

(C. L. MAHAR)
MEMBER (TECHNICAL)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

Raksha