

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI**

Case Diary No.40206/2019

**M/s JATIN SHIVJI CHHEDA
PROPRIETOR, M/S PAPCP NO 85
MOODY STREET, 1ST FLOOR
MEGHDOOTH CHAMBERS, FORT MUMBAI-400001**

Vs

**COMMISSIONER OF CUSTOMS (IMPORT)
CHENNAI II COMMISSIONERATE, CUSTOMS HOUSE
60, RAJAJI SALAI, CHENNAI-600001**

Date of Hearing: 15.4.2019

Date of Decision: 15.4.2019

Appellant Rep by: Shri G Derrick Sam, Adv.

Respondent Rep by: Shri Jagan Babu, AC (AR)

CORAM: P Dinesha, Member (J)

Cus - The appellant filed the present appeal which was found to be defective due to non-compliance with mandatory requirement of pre-deposit.

Held: The appeal format in CA-3 carries a specific column at 14(i) which must be filled up by the appellant - The appeal memo would be complete in all respects if only all the columns are filled up before the appeal is filed - Hence where the format itself requires filling up the column with regard to pre-deposit & the same is mandated u/s 35F(ii) of the CEA, 1944, not filling up such columns would inevitably render the appeal as being incomplete - The Registry merely checks for compliance with the provisions of Section 35F and has no other option but to reject an incomplete appeal - Besides, the appellant did not file for waiver of pre-deposit or furnish an order to such effect,

passed by a higher forum - Thus as the requirement of pre-deposit is not complied with, such an incomplete appeal cannot be taken on board & merits being rejected: CESTAT

Appeal dismissed

Case law cited:

Santani Sales Organisation Vs. Cestat, New Delhi - 2018-TIOL-1058-HC-DEL-ST... Para 3...followed

DEFECT MISC. ORDER NO. 40244/2019

This defect appeal was heard on 11.03.2019 by a single Member Bench and hence the matter was posted for hearing today as a last chance. Today when the matter was called, Ld. Advocate seeks time.

2. Ld. DR Shri Jagan Babu, AC, opposes the request of the assessee-appellant and contends that the pre-deposit is a mandatory deposit to be made along with the appeal memorandum. The appellant having not done, appeal can't be entertained.

3. Heard both sides. The appeal format in CA-3/EA-3 carries a specific column, at 14 (i) which is to be filled up by the appellant. The appeal memo would be complete in all respects only if all the columns are filled up and then filed. When the format itself requires filling up of the column with regard to pre-deposit which is mandated in terms of Section 35F (ii) of Central Excise Act w.e.f. 06.08.2014, non-filing would invariably make the appeal incomplete. At this point of time, the Registry which only looks into the compliance with the provisions of 35 F, is left with no choice but to reject the incomplete appeal. I take shelter under the recent decision of the Hon'ble High Court of Delhi in the case of *Santani Sales Organisation Vs. Cestat, New Delhi - 2018 (13) GSTL 144 (Del.) = 2018-TIOL-1058-HC-DEL-ST*, wherein, the Hon'ble High Court after analysing the provisions of Section 86 of the Finance

Act and Section 35 F of the Central Excise Act which relate to pre-deposit, has held at para-23 as under:-

".....23. Section 86 of the Finance Act provides for an appeal before the Tribunal and Section 83 of the Finance Act makes Section 35 F of the C.E. Act equally applicable. Section 35 F of the C. E. Act is the provision which relate to pre-deposit a mandatory provision for the appeal to be maintainable and heard....."

4. On a perusal of the appeal record, I do not find any application by the appellant for waiver of pre-deposit nor has the appellant furnished any waiver order of the higher forum of the pre-deposit.

5. In view of the above, the pre-deposit should have been made along with the appeal memo, and the appellant having not complied with the same, the incomplete appeal cannot be taken on board and hence is rejected.

(Operative part of the Order pronounced in the open court)