CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 23371 of 2014
(Arising out of **Order-in-Appeal** No.37/2014 (H-II) ST dated 23.07.2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

ECI BJCL JV .. **APPELLANT**
Plot No.70, Anshu Colors,
3rd Floor, Road No. 1,
Jubilee Hills,
Hyderabad,
Telangana – 500 033.

VERSUS

Commissioner of Central Excise and Service Tax Hyderabad - I .. **RESPONDENT**
Kendriya Shulk Bhavan,
L.B Stadium Road,
Basheerbagh,
Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri C.S. Srinivas, Consultant for the Appellant.
Shri Dr. T.V. Rajesh, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30442/2026

Date of Hearing: 29.06.2026
Date of Decision: 12.08.2026

[ORDER PER: ANGAD PRASAD]

The present appeal is directed against Order-in-Appeal No. 37/2014 (H-II) ST dated 23.07.2014 passed by the Commissioner (Appeals), whereby, the appeal filed by the appellant came to be dismissed for non-compliance with the order-in stay petition dated 13.06.2014 directing pre-deposit of 50% of the adjudged Service Tax demand.

2. The fact, in brief, is that the appellant M/s ECI-BJCL JV, executed EPC/ works contract relating to construction of dams, reservoirs, canals and allied structures of the Government of Andhra Pradesh during the period from June, 2007 to March, 2012.

3. The Show Cause Notice dated 23.10.2012 demanded Service Tax amounting to Rs. 43,86,471/- under Works Contract Service.

4. The Adjudicating Authority confirmed the demand vide Order-in-Original dated 09.01.2014. Being aggrieved, the appellant preferred an appeal before Commissioner (Appeals), along with an application for wavier of pre-deposit.

5. The records reveal that the Commissioner (Appeals), fixed the stay application for hearing on 12.06.2014. Before the scheduled date, the appellant sought adjournment stating that certain accounts were under finalization.

6. The Commissioner (Appeals), however, rejected the request and by order-in-stay petition dated 13.06.2014 directed the appellant to deposit 50% of the Service Tax demand.

7. Subsequently, the appellant address another representation dated 18.06.2014 requesting the Commissioner (Appeals), to pass a speaking order after considering the legal submissions and judicial precedents relied upon by the appellant.

8. Without granting any further hearing and without the appellant complying with the condition of pre-deposit, the Commissioner (Appeals),

pass the impugned Order-in-Appeal dated 23.07.2014, dismissing the appeal for non-compliance with the stay order.

9. The Learned Counsel submits that the appeal has been dismissed without adjudicating the merits of the dispute. It is contended that Commissioner (Appeals), failed to examine whether the appellant had a strong prima facie case in view of the Larger Bench decision in Lanco Infratech Ltd., Vs Commissioner of Central Excise, Belapur, [2011 (271) E.L.T. 75 (Tri.-Mumbai)], which held that construction of dams, canals and EPC projects of such nature are not liable to Service Tax.

10. It is further argued that while deciding the stay application, the Commissioner (Appeals), did not consider the well-settled parameters governing grant of waiver, namely: (i) Existence of a prima facie case; (ii) Balance of convenience; and (iii) Financial hardship.

11. According to the appellant, the dismissal of appeal merely for non-compliance with the pre-deposit order, without deciding the appeal on merits and without considering legal submissions violates the principles of natural justice. Reliance is place upon Badve Helmets India Pvt Ltd., Vs CCE, Aurangabad, 2012 (28) STR 403 (Tri-Mumbai)], DSM Sugar Vs Commissioner of Central Excise Appeals [2009 (248) ELT 49 (All)], Pennar Industries Ltd., Vs State of A.P. [2015 (322) ELT 25 (SC)], Amber Anuruddha Mufti Vs Commissioner of Customs (Appeals) [2013 (295) ELT 509 (Bom.)], Surya Pharmaceutical Ltd., Vs Union of India [2014 (5) TMI 24- Punjab and Harayana High Court], B. Rama Rao & Company Vs Commissioner of Central Excise, Hyderabad [2012 (11) TMI 44 – CESTAT,

Bangalore] & Thermopads Pvt Ltd., Vs The Commissioner of Central Excise, Hyderabad [2013 (1) TMI 224 – CESTAT, Bangalore].

12. The Learned Authorized Representative supports the impugned order and also submitted that the Commissioner (Appeals) had afforded an opportunity of hearing before passing the stay order. The request for adjournment was considered but declined keeping in view the statutory requirement of expeditious disposal of stay application.

13. Revenue further submits that the stay order is a reasoned order and therefore, there is no violation of Circular No. 524/20/2000-CX dated 06.04.2000.

14. It is also argued that the appellant admittedly failed to comply with the condition of pre-deposit and consequently the Commissioner (Appeals), was justified in dismissing the appeal. Revenue has also distinguished the judgments relied upon the appellant by contending that the fact of those cases are materially different. Revenue has relied on the following decisions:

(i) M/s Shree Ambica Steel India Vs Commissioner of Central Excise, Chandigarh [2002 (150) ELT 931 (Tri-Del)]

(ii) Lizer Technologies Ltd., Vs Commissioner of Central Excise, Belapur[2011 (271) E.L.T. 75 (Tri. – Mumbai)]

(iii) D.K. Mishra Vs Commissioner of Central Excise, Allahabad [2009 (243) E.L.T. 420 (Tri.-Del.)]

(iv) Union of India Vs M/s Aakar Advertising [2008 (11) STR 5 (Raj.)]

(v) M/s Navin Chandra Chhotelal Vs Central Board of Excise & Customs [1981(8) ELT 679 (SC)]

(vi) Vijay Prakash D. Mehta Vs Collector of Customs [(1998) 39 ELT 178 (SC)]

(vii) Shreewood Products Pvt Ltd., Vs Commissioner of Central Excise [(2003) 160 ELT 920 (Tri-Del)]

(viii) Final Order No. A/30124/2025 dated 16.04.2025 of CESTAT, Hyderabad in the case of Nahida Nasreen.

15. We have heard both the parties and perused the records.

16. The undisputed facts reveal that the Commissioner (Appeals), granted an opportunity of personal hearing to the appellant. The appellant sought adjournment for the hearing for about 1 month. The Commissioner (Appeals), however, considered the request and recorded in the stay order that having regard to the statutory requirement of expeditious disposal, such a long adjournment could not be granted. The stay order also records the reason for directing the appellant to make a pre-deposit of 50% of the disputed tax. Therefore, it cannot be said that the stay order was passed mechanically or without assigning reasons.

17. The appellant has relied upon decisions such as Badve Helmets India Pvt Ltd., supra, DSM Sugar, supra, Pennar Industries Ltd., supra, Amber Anuruddha Mufti, supra. On careful examination, we find that the factual background of those decisions is materially different. Those judgments were rendered in cases where the Appellate Authority had either failed to pass a reasoned order or where adequate opportunity of hearing had not been afforded. In the present case, however, the Commissioner (Appeals), has specifically referred to the request for adjournment, considered the same and recorded reasons for declining it. Consequently, the ratio of the said decisions does not advance the case of the appellant.

18. We further find considerable force in the submissions of the Revenue that the amended provisions of Section 35F, providing for a mandatory pre-deposit of 10%, came into force only w.e.f 06.08.2014 and are prospective in operation. Since, the impugned order was passed prior to the amendment

the rights and obligations of the parties continue to be governed by the unamended provisions. Therefore, the subsequent deposit of 10% made by the appellant cannot cure the earlier default committed in complying with the conditional stay order passed under the then exiting statutory regime.

19. The law is well settled that the right of appeal is a statutory right and is subject to the conditions prescribed by the statute. Under the unamended under Section 35F of the Central Excise Act, 1944, the Commissioner (Appeals), possessed jurisdiction to insist upon a suitable pre-deposit while considering waiver applications. Once such a condition was imposed, it was incumbent upon the appellant either to comply with the condition or the seek appropriate relief before the competent forum. Failure to comply entitled the Appellate Authority to reject the appeal.

20. The decisions relied upon by the Revenue, including Navin Chandra Chhotelal, supra, Vijay Prakash D. Mehta, supra, M/s Aakar Advertising, supra, M/s Shree Ambica Steel India, supra, Lizer Technologies Ltd., supra and D.K. Mishra, supra, consistently hold that where the statute makes pre-deposit a condition precedent for entertaining an appeal, non-compliance with such condition empowers the Appellate Authority to dismiss the appeal and the Tribunal cannot ignore the statutory mandate. We respectfully follow the aforesaid principles.

21. We also find no merit in the plea that the Commissioner (Appeals), violated principles of natural justice. Merely because the appellant requested adjournment, no indefeasible right accrued in its favour to obtain the adjournment sought. The authority has exercised its discretion judicially by

recording reasons for declining the request. In the absence of any procedural illegality or perversity, interference by this Tribunal is not warranted.

22. The subsequent compliance with the amended requirement of 10% pre-deposit cannot retrospectively validate the appeal which had already stood dismissed under the then applicable statutory provisions. Accepting such a contention would amounts to giving retrospective effect to the amendment, which is not permissible.

23. In view of the above discussions, we hold that the Commissioner (Appeals), committed no legal error in dismissing the appeal for non-compliance with the condition of pre deposit under the unamended Section 35F of the Central Excise Act, 1944. The impugned order in appeal is accordingly upheld.

24. Consequently, the appeal filed by the appellant is dismissed.

(Pronounced in the open court on 12.08.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha