

2013 (2) ECS (114) (Tri - Del)

**IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Court No. 1**

M/s Zeto Engineering Pvt. Ltd. & Others

Vs.

CCE, Chandigarh

**Excise Appeal No.s 3341 – 3342 of 2012 with
Excise Saty Nos. 4248 4249 of 2012**

Date of hearing: 19.3.2013

(Arising out of order in appeal No. 136-137/CE/CHD-I/2012 dated 16.08.2012 passed by the Commissioner (Appeals) Customs & Central Excise, Chandigarh)

M/s Zeto Engineering Pvt. Ltd. & Others
Mr. Amrik Singh, Managing Director

Appellants

Vs.

CCE, Chandigarh

Respondent

**Excise Appeal No.s 3601 of 2012 with
Excise Saty Nos. 4599 of 2012**

(Arising out of order in appeal No. 140-141/CE/CHD-I/2012 dated 16.08.2012 passed by the Commissioner (Appeals) Customs & Central Excise, Chandigarh)

M/s Zeto Engineering & Fabricators

Appellants

Vs.

CCE, Chandigarh

Respondent

**Excise Appeal No.s 3602 of 2012 with
Excise Saty Nos. 4600 of 2012**

(Arising out of order in appeal No. 138-139/CE/CHD-I/2012 dated 16.08.2012 passed by the Commissioner (Appeals) Customs & Central Excise, Chandigarh)

M/s GDB Enterprises

Appellants

Vs.

CCE, Chandigarh

Respondent

Appearance:

Shri K K Anand, Advocate for the Appellants

Shri R K Mathur, DR for the Respondent

CORAM:

Hon'ble Mr. Justice G. Raghuram, President

Hon'ble Sahab Sing, Member Technical

FINAL ORDER No. 55872 – 55875/2013

“There is no provision enabling or authorizing the Commissioner to review an order passed, exercising discretion under Section 35 F. In the circumstances no application for review of the said order, even if filed as an “application for modification” could have been entertained, as the Commissioner (Appeals) lacks jurisdiction to review his order.” [Para 6]

Per Justice G. Raghuram:

1. We have heard Shri K K Anand, learned Counsel for the appellant and Shri R K Mathur, learned DR for the Revenue. We consider it appropriate to dispose of the appeals, at the stage of listing of interlocutory applications.
2. The several appeals are preferred against orders – in – appeal dated 7.08.2012 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh

– I. These appeals arise out of distinct orders – in – original, all dated 31.03.2011 passed by the Additional Commissioner, Central Excise Commissionerate, Chandigarh – I – the adjudicating authority.

3. Vide several orders dated 07.08.2012, the Commissioner (Appeals) had rejected appeals preferred by the appellants herein for non – compliance with earlier orders of pre – deposit and provisions of Section 35 F of the Central Excise Act, 1944. For brevity, the facts in appeal No. E/3341 of 2012 are set out, since the relevant facts in all the appeals are substantially similar.
4. On allegation that modvat credit of Rs. 3,44,398/- on G P sheets was fraudulently availed by the appellant (in E/3341 of 2012), a show cause notice was issued to the appellant (M/s Zeto Engineering Pvt. Ltd.), for recovery, invoking the extended period of limitation and further seeking to impose penalty besides recovery of interest. Eventually, by the order dated 31.03.2011, the adjudicating authority confirmed the demand and imposed interest and penalties. Aggrieved by the adjudication order, the appellant preferred an appeal alongwith an application for stay. By the order dated 06.07.2011, the Commissioner (Appeals) directed the appellant to remit Rs 3 lakhs while waiving the balance liability, exercising discretion under the 1st proviso to Section 35 F of the Central Excise Act. The appellant sought modification of the condition imposed. This request was rejected by the order dated 13.07.2012 of the Commissioner (Appeals), who directed that the amount should be deposited with the time now stipulated. As the appellant failed to deposit the amount in terms of the order dated 06.07.2011, the appeal was dismissed for non – compliance with the order dated 06.11.2011 and Section 35 F of the Act.
5. Learned Counsel for the appellants submits that the order of the Commissioner (Appeals) dated 13.07.2012 (rejecting the appellant's plea for modification) and the order dated 07.08.2012 (rejecting the appeals for non – compliance with the condition) are unsustainable. It is contended that the appellate authority had dismissed the application for modification (of the order dated 06.07.2011) without providing the appellant a reasonable opportunity for submitting justification for seeking modification; since the order dated 13.07.2012 is invalid for violation of principle of natural justice, the consequent order dated 07.08.2012 rejecting the appeals for non – compliance with the condition of deposit is also invalid, is the submission.
6. The contentions urged on behalf of the appellants do not commend acceptance by this Tribunal. By order dated 06.07.2011, the appellate authority had granted

waiver of pre – deposit by imposing a condition on the appellant to deposit the amounts stipulated in the said order. This order was passed in exercise of the discretion available under Section 35 F of the Act. There is no provision enabling or authorizing the Commissioner to review an order passed, exercising discretion under Section 35 F. In the circumstances no application for review of the said order, even if filed as an “application for modification” could have been entertained, as the Commissioner (Appeals) lacks jurisdiction to review his order. The order dated 13.07.2012 rejecting the appellant’s application for modification, whether passed after notice and opportunity to the appellant or otherwise, is unassailable. If the order dated 13.07.2012 (rejecting the appellant application for modification) is set aside on the ground of violation of principles of natural justice, it would revive the appellant’s application for modification which is not maintainable, for lack of jurisdiction to review, conferred on the appellate authority. The order dated 07.08.2012 (rejecting the appeals), is also unassailable since the appellant failed to comply with the order dated 06.07.2011, directing deposit of the specified amount as the condition for grant of waiver of pre – deposit.

7. On the aforesaid analysis, we find no error either in the order dated 13.07.2012 or order dated 07.08.2012.
8. The appeals are accordingly dismissed. There shall however be no order as to costs.