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

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 216 of 2012-DB

(Arising out of OIA-48/2012-STC-/KANPAZHAKAN/COMMR-A-/AHD Dated- 31/01/2012 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

Shridhar Construction **........Appellant**
''Krishnakunj'' Near Guru Dwara, Balwatika To Maninagar,
Station Road, Maninagar, Ahmedabad, Gujarat

VERSUS

C.S.T.-Service Tax – Ahmedabad **........Respondent**
7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
Central Excise Bhavan, Ambawadi,
Ahmedabad, Gujarat-380015

APPEARANCE:
Shri. Jigar Shah, Advocate for the Appellant
Shri. Prakash Kumar Singh, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Final Order No. A/ 10011 /2023

DATE OF HEARING: 22.12.2022
DATE OF DECISION:05.01.2023

RAMESH NAIR

This appeal is directed against the order of Commissioner (Appeals) whereby the learned Commissioner (Appeals) dismissed the appeal of the appellant only on the ground of limitation as the appeal was filed beyond 90 days from the date of receipt of the order.

2. Shri. Jigar Shah, learned counsel appearing on behalf of the appellant submits that the order was delivered to the accountant of the appellant firm who has not communicated to the appellant firm in time, therefore, the

service of the order is not as per law. He referred to Section 37C to submit that as per Section 37C the order should have been served to the person for whom it is intended or his Authorized Agent if any. In the present case the order was not served to the appellant firm but it was delivered to the accountant which is not the Authorized Agent of the appellant. Therefore, it cannot be said that the date of service of order to the accountant is the date of communication. He placed reliance on the Supreme Court judgment in the case Saral Wire Craft Pvt. Ltd. Vs. Commissioner of Customs, Central Excise & Service Tax-2015 (322) ELT 192 (S.C). He submits that the Commissioner (Appeals) has erred in considering the date of delivery of order to the accountant as the correct date of communication. Therefore, the order is not sustainable. He prays that the same may be set aside.

3. Shri. Prakash Kumar Singh, learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that at this juncture we cannot go into the merit of the case, for the reason that the learned Commissioner (Appeals) has dismissed the appeal only on limitation. We find that as regard the limitation the learned Counsel has emphatically submitted that the order was not served in terms of Section 37C and he also placed heavy reliance on the Supreme Court judgment in the case of Saral Wire Craft Pvt. Ltd. (Supra). We find that this legal aspect has not been examined properly by the learned Commissioner (Appeals). Therefore, in our considered view the learned Commissioner (Appeals) needs to examine regarding the provision of service of order in the light of Apex Court judgment cited by the appellant. Accordingly, we set aside the impugned order and remand the matter to the Commissioner (Appeals) to reconsider the aspect of limitation and pass a fresh order.

5. The impugned order is set aside. The appeal is allowed by way of remand to the Commissioner (Appeals)

(Pronounced in the open court) On 05.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PRACHI