

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

**Customs Miscellaneous (Early Hearing) Application  
No.70112 of 2023**

(On behalf of the appellant)

**In**

**Customs Appeal No.70093 of 2023**

(Arising out of Order-in-Appeal No.148-CUS/APPL/LKO/2023 dated 02/02/2023 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

**Shri Raj Kumar Swarnkar,**

(1249/3G, Purani Fal Mandi, Makarikhoh,  
Opp. BLJ School, Mirzapur-231001)

**.....Appellant**

*VERSUS*

**Commissioner of Customs, Lucknow**

**....Respondent**

(3/194, Vishlkhand-3, Gomti Nagar, Lucknow-226010)

**APPEARANCE:**

Shri Kartikeya Narain, Advocate for the Appellant

Shri Sarweshwar T. Khairnar, Authorised Representative for the  
Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO.70225/2023**

DATE OF HEARING : 24 November, 2023  
DATE OF DECISION : 24 November, 2023

**P.K. CHOUDHARY:**

The present Miscellaneous Application is filed for the early hearing of the appeal. In view of the submissions, as made by the Learned Advocate appearing for the Appellant and as mentioned in the Miscellaneous Application, the early hearing application is allowed.

2. Further, with the consent of both the sides, I proceed to hear the appeal today itself.

3. This appeal is directed against Order-in-Appeal No.148-CUS/APPL/LKO/2023 dated 02/02/2023 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow.

4. The facts of the case are that the appellant was earlier running a jewellery shop at in the name and style of M/s. Kamakhya Bullion Center, Ganeshganj, subzi mandi, PS-Katra, District-Mirzapur-U.P. It is the appellant's case that on account of some business transaction, his employee Shri Suresh Kumar was returning by train from Kolkata carrying two gold bars and when the train reached Mughalsarai Junction on 24.04.2017, his employee was apprehended by the G.R.P Personal, who handed over the recovered gold to the team of Customs Preventive, Varanasi. After issuing show cause notice dated 17.10.2017, the Order-in-Original dated 06.07.2018 was passed, subjecting the seized gold to absolute confiscation and imposing penalty of Rs.4 lakhs on the appellant. Appeal against the said Order-in-Original dated 06.07.2018 has been rejected by the impugned Order-in-Appeal as barred by limitation, without entering into the merits of the case.

5. I have heard Shri Kartikeya Narain, learned Counsel for the appellant and Shri Sarweshwar T. Khairnar learned Authorised Representative for the revenue.

6. Learned Counsel for the appellant submits that the appellant was a small-time jeweller and after seizure of the two gold bars, the appellant closed down its business activities, for want of working capital and entire finances invested in the two gold bars, which were seized by the revenue. After closure of shop, the appellant shifted to other residential premises situated at 1249/3G, Purani Fal mandi, Makarikhoh, opp. BLJ School, Mirzapur-231001. Further, he submits that since the complaint case was also instituted by the revenue before the court of Special CJM, Varanasi, hence under the legal advice given by its counsel engaged for contesting criminal complaint, the appellant was under a bonafide impression that only one proceeding can be imitated by the revenue, which is clear from the letters dated 26.03.2018, 05.01.2018 and 03.05.2018. The learned counsel

further submits that during the period when the appellant contested criminal proceedings, he was not aware of the Order-in-Original and the said order was also not served on him in the manner known to law, as by that time he had shifted to a new address. The learned counsel further submits that in the meanwhile, covid-19 pandemic struck the entire country and the appellant being the sole bread earner of his family barely managed to earn daily livelihood and therefore could not approach the office of the adjudicating authority to make any enquiry about the show cause notice. It was only in the first week of April 2022, when situation became slightly normal, the appellant approached the office of the adjudicating authority, and it was only then, for the very first time the appellant came to know that the show cause notice has been adjudicated. Immediately thereafter, the appellant applied for copy of the said order, which was provided to him on 05.05.2022 and it was only then, for the very first time, the appellant became aware of the Order-in-Original dated 06.07.2018. Immediately thereafter, the appellant preferred appeal before the Commissioner (appeals). However the Commissioner (Appeals) without appreciating the fact that order was apparently dispatched to the old address of the appellant and the revenue could not produce the acknowledgement of speed post, dismissed the appeal as barred by limitation. The learned counsel for the appellant has also relied upon some judgments, which shall be dealt with in the later part of this order.

7. Per contra, learned Authorised Representative for the revenue submits that the order was served in accordance with the provisions contained under section 153 of the Customs Act and therefore the appeal was rightly dismissed by the commissioner (appeals) on the ground of limitation.

8. The short controversy involved in the present appeal is that whether the appeal filed by the appellant was filed within the prescribed period of limitation specified under Section 128 of the Customs Act, 1962 or not. The period of limitation provided under the said Section 128 is **'sixty days from the date of**

**communication of decision or order’.** On one hand the appellant claims that the Order-in-Original dated 06.07.2018 was communicated to him for the very first time only on 05.05.2022 when copy of the said order was made available to him on request being made whereas on the other hand the impugned order records that the said order was dispatched by speed post vide letter dated 06.07.2018.

9. Since the impugned order records that the order dated 06.07.2018 was dispatched by speed post, hence it is necessary to refer to Section 153 of the Act, relevant part of which is reproduced here:

**"153.***Modes for service of notice, order, etc. -*

*(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely :-*

*(a) .....*

*(b) **by a registered post or speed post or courier with acknowledgement due,** delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;*

*.....*

*(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved."*

On perusal of the above provision it seems that it is only when the order, decision, summons, notice or any other communication is sent by a registered post or speed post or courier with acknowledgement due, it shall be deemed to have been received by the addressee, unless the contrary is proved. Thus, the initial burden to demonstrate that the order was sent

by speed post with acknowledgement due is on the revenue. It is only when this initial burden is discharged by the revenue, only then the onus shifts to the addressee to prove to the contrary.

10. In the present case, since it was the specific case of the appellant before the Commissioner (Appeals) that the speed post was not delivered to him, hence it was incumbent upon the revenue to bring on record the date of speed post and the 'acknowledgement' of such speed post. However, despite such an specific assertion being made, the impugned order neither records the date on which the speed post was sent/dispatched nor the date of acknowledgment of the speed post. In absence of the date of dispatch by speed post and date of acknowledgement, the revenue has clearly failed to discharge the initial onus and therefore it cannot be said that the order dated 06.07.2018 was communicated to the appellant at any time on or around 06.07.2018.

11. Further, as held by division bench of this Tribunal in ***Indo Rama Synthetics India Ltd. v. Commissioner of Customs 2020 (371) ELT 621 (Tri-Mum)***, once the revenue failed to bring on record the proof of service and the order sent by speed post was not delivered back, then the same was required to be delivered by other modes specified under Section 153 or by displaying the same on the notice board, which admittedly has not been done in the present case. Following the binding decision, I have no option but to hold that compliance of Section 153 was not made by the revenue.

12. Further, in the facts and circumstances of the present case, when the appellant changed its address on account of closure of business, he had no means to be aware of the order and has nothing to gain by not filing the appeal timely. I am of the considered opinion that the date of communication of the order is to be considered as 05.05.2022, when the copy of order dated 06.07.2018 was provided on the request made by the appellant. As the revenue failed to comply with Section 153 and has not brought on record any other date prior to 05.05.2022,

when the order was served in any of the modes specified under Section 153.

13. The finding in the impugned order that the order dated 06.07.2018 was dispatched vide letter no. C.No.VIII[10] 83-Adj-/ADC/VNS/2017/3447 to 3445 dated 06.07.2018 is also of no consequence as the same only refers to the date of letter and not the date when the impugned order was '**dispatched**' by speed post and the date of acknowledgement by the addressee. Similarly reference to the letter dated 05.05.2022 is also irrelevant, as the said letter nowhere records the date of speed post or the date of acknowledgement.

14. In view of the aforesaid discussion, the order dated 02.02.2023 impugned is set-aside and the matter is remanded back to the Commissioner (Appeals) to decide the matter on merits after giving personal hearing to the appellant. At the same time, the appellant is also restrained from seeking any unnecessary adjournment and cooperate for early disposal of the matter.

15. Accordingly, the appeal is allowed by way of remand to the Commissioner (Appeals) for decision on merits.

(Dictated and pronounced in open court)

Sd/-  
**(P.K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

*akp*