CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Early Hearing Application No.70702 of 2024
(On behalf of the Appellant)
In
Service Tax Appeal No.70789 of 2024

(Arising out of Order-in-Appeal No.340-ST-ALLD-2024, dated -20/06/2024 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s Dhiraj Srivastava .....**Appellant**
(186-C, Umarpur Sahakarita Colony,
Polytechnic Crossing Sadar
Jaunpur, Uttar Pradesh 222001)

VERSUS

Commissioner, CGST & Central Excise, Allahabad
....**Respondent**
(38, M.G Marg, Civil Lines, GST Bhawan,
Prayagraj, Uttar Pradesh 211001)

APPEARANCE:
Shri Saurabh Agarwal, Chartered Accountant for the Appellant
Shri Manish Raj, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70704/2024

DATE OF HEARING : 29.10.2024
DATE OF DECISION : 29.10.2024

P. K. CHOUDHARY:

The Miscellaneous Application (Early Hearing) has been filed by the Appellant/Assessee praying for out of turn hearing of the appeal.

2. Considering the submissions made by the learned counsel for the Appellant, the prayer for Early Hearing of the appeal is accepted. Accordingly Early Hearing Application filed by the

Appellant is allowed and with the consent of both the sides appeal itself is taken up for hearing and disposal.

3. The present appeal has been filed by the Appellant assailing the Order-In-Appeal No.340-ST-ALLD-2024, dated - 20/06/2024 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad whereby he has rejected the appeal before him as not maintainable.

4. The facts of the case in brief are that the Order-In-Original dated 24.02.2023 was dispatched through registered post bearing No.RU556894935IN which was returned undelivered with the remark "pata nahi chala atah vapas" and thereafter the impugned order was served upon the Appellant through his GSTIN registered email diwakartax10@gamil.com on 27.10.2023. However, on request of the Appellant, photocopy of the impugned order was sent to the Appellant on 05.02.2024. It is the case of the Appellant that after receiving the order on 05.02.2024 they had filed the appeal before the First Appellate Authority on 20.03.2024 i.e. well within the statutory period of filing of the appeal before the First Appellate Authority. However, the learned Commissioner (Appeals) observed that the claim of the Appellant to have received the Order-In-Original on 05.02.2024 is factually incorrect as the Order-In-Original dated 24.02.2023 was served on 27.10.2023 on their GSTIN registered email diwakartax10@gamil.com. Considering the date of service as 27.10.2023, the Appeal filed on 20.03.2024 was rendered to have been filed beyond the prescribed time limit and also beyond the condonable period. Accordingly, he dismissed the appeal before him as barred by limitation of time. Hence, the present appeal before the Tribunal.

5. The learned Chartered Accountant appearing on behalf of the Appellant submits that the learned Commissioner (Appeals) was not justified in considering the service of the order through GSTIN registered email on 27.10.2023. He also referred to Section 37C of the Central Excise Act, 1994 which provided

for service of decision/orders summons etc. He also relied upon the following decisions in support of his submissions:-

(i) Navakar Agro Industries Ltd. V/s C.C.E. & S.T.-Ahmedabad-III [Final Order No.12551/2023 in Excise Appeal No.13715 of 2014 (Tri-Ahmedabad)]

(ii) Vinod Choudhary V/s Union of India [2016 (336) E.L.T. 388 (Raj.)

(iii) Hindustan Lever Ltd. V/s Commissioner of Central Excise, Chennai-IV [2006 (194) E.L.T. 352 (Tri.-Mumbai)]

(iv) Ratan Coal Traders V/s Commissioner of C.Ex., Chandigarh [2015 (322) E.L.T. 548 (Tri-Del.)

6. Learned Departmental Representative appearing on behalf of the Revenue has justified the impugned order and prayed that the appeal filed by the Appellant being devoid of any merit be dismissed.

7. Heard both the sides and perused the appeal records.

8. For the sake of ready reference, Section 37C of the Central Excise Act, 1994 is reproduced below:-

> *"37C. Service of decisions, orders, summons, etc.—(1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served,—*
>
> *(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due 4 [or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)], to the person for whom it is intended or his authorised agent, if any;*
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> *(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or*

warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice-board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post [or courier referred to in sub-section (1)] or a copy thereof is affixed in the manner provided in sub-section (1)."

9. I find that the Order-In-Original dated 24.02.2023 was dispatched by registered post bearing No.RU556894935IN but the same was returned undelivered and this fact has been recorded by the Commissioner (Appeals) in the impugned order at Para 4.1.1. Subsequently, a copy of the order was sent through GSTIN registered email on 27.10.2023. However, on request of the Appellant, a photocopy of the impugned order was sent on 05.02.2024.

10. I find that the Tribunal in the case of Ratan Coal Traders V/s Commissioner of C.Ex. Chandigarh (Supra) held that the provision of Section 37C of Central Excise Act, 1944 have to be followed in letter and spirit and accordingly allowed the appeal by way of remand to the learned Commissioner (Appeals) to consider the appeal on merits. Similar view has been expressed by the Tribunal in the case of Navkar Agro Industries Ltd. (Supra). The relevant paragraph of the of the order is reproduced below:-

"4.1 From the above section it can be seen that the order shall be served by tendering the same or sending it by register post with acknowledgment due or by speed post

with proof of delivery or by courier approved by the Central Board of Central Excise and Customs constituted under the Central Board of Revenue Act 1963 to the person for whom it is intended or is authorized agent. In the present case it is admitted fact from the report of Jurisdictional Assistant Commissioner dated 22.07.2014 that the order was neither tendered personally to the appellant nor send by registered post or by speed post to the appellant. However, the same was pasted/affixed on the gate of the appellant factory. As per the Clause (b) of Section 37 C(1) it is clear that only if the order cannot be served in the manner provided in clause (a)then only the order should be affixed to some conspicuous part of factory or warehouse or other business etc. as the case may be. With this provision it is clear that it is mandatory on the part of the revenue to first attempt the service of the order by tendering or sending by registered post/speed post and only it is not possible to send by tendering or by registered post that means after sending the order by registered post /speed post if the same is returned back, thereafter only the revenue should paste/ affix the order copy on the factory gate of the appellant. The revenue has admittedly failed to comply with the provision of Clause (a) of Section 37 C (1). Therefore, the service of the order by affixing on the factory gate is absolutely illegal and incorrect and the date of such affixing, cannot be taken as date of service of order. Consequently, the date of receipt of order copy by the appellant from their Dena Bank can only be considered as communication of the order to the appellant. From the date of receipt of order from Dena bank the appellant had filed the appeal before Commissioner (Appeals) well within stipulated time of 60 days. Therefore, there is no delay in filing the appeal. The ld. Commissioner (Appeals) should not have dismissed the appeal on time bar. Therefore, the impugned order is clearly not sustainable. Hence, the same is set aside.
4.2 The learned Commissioner (Appeals) shall decide the appeal on merit without going into aspect of limitation. Needless to say that before passing the appellate order on merit the appellant should be given opportunity of hearing, accordingly, the natural justice shall be complied with.

11. In view of the aforesaid decisions of the Tribunal, I find it appropriate to set aside the impugned order and remand the matter to the learned Commissioner (Appeals) to decide the appeal on merits without further going into the aspect of limitation. Needless to say that before passing the Appellate order, the Appellant should be given an opportunity of hearing and principal of natural justice must be complied with. Appeal

filed by the Appellant is allowed by way of remand to the Commissioner (Appeals).

(Dictated and pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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