CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Miscellaneous Application No.70061 of 2025
(on behalf of Appellant)
in
Service Tax Appeal No.70031 of 2023

(Arising out of Order-in-Appeal No.778-ST/APPL/LKO/2022 dated 03.10.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

Shri Gaurav Sahu, **.....Appellant**
(142, 134 Hari Nagar, Dugawan, Lucknow-226018)

VERSUS

Commissioner of Central Excise &
Service Tax, Lucknow **....Respondent**
(7A, Ashok Marg, Lucknow)

APPEARANCE:

Shri Dushyant Kumar, Consultant for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

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

MISCELLANEOUS ORDER NO.- 70039/2025
FINAL ORDER NO.- 70078/2025

DATE OF HEARING : 14.02.2025
DATE OF DECISION : 14.02.2025

The Appellant/Applicant has filed Miscellaneous Application for additional grounds in respect of Service Tax Appeal No.70031/2023. After hearing both the sides, additional grounds have been taken on record and Miscellaneous Application is thus allowed.

2. The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.778-ST/APPL/LKO/2022 dated 03.10.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow vide which the appeal filed against the Order-in-Original dated 23.12.2021 has been rejected on the

grounds of limitation holding that the appeal filed on 16.08.2022 is beyond permissible condonable time limit of one month, hence cannot be condoned.

3. The facts of the case in brief are that the Appellant is an Internet Installation Service provider to customers of the companies providing Broadband Access Services. During the course of providing the services, Cable is being laid down and Router is installed on customer's premises. The cost of the Router and Cable/Wire etc., has been charged from the customers through bills alongwith installation charges. The demand of Rs.2,49,718/- has been raised on the basis of third party information received from the Income Tax Department for the financial year 2015-16 wherein the Appellant has shown the gross receipts as under:-

Income	**Amount**
By Installation Charges Received	6,72,800/-
By Sale of Equipments	10,49,395/-
By Commission Received	1,600/-
Total	17,23,795/-

4. Accordingly show cause notice[1] was issued proposing as under:-

"13. Now, therefore, Gaurav Sahu, H. No.-142/134 Hari Nagar, Dugawan, Lucknow-226018, are required to show cause and explain in writing to the Assistant/Deputy Commissioner, CGST and Central Excise Division Lucknow-II within thirty days of receipt of this Notice as to why:-

(i) The Service Tax amounting to Rs.2,49,718/- (Rupees Two Lakhs Fourty Nine Thousand Seven Hundred Eighteen only) including Education Cess, Secondary & Higher Education Cess should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017.

[1] SCN

(ii) The due interest on the amount of Service Tax mentioned at (i) above should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 read with Section 142 & 174 of the CGST Act, 2017.

(iii) Penalty under Section 77(1)(a) of the Finance Act, 1994 should not be imposed upon the taxpayer under Section 69 of the Act ibid read with Section 142 & 174 of the CGST Act for not taking service tax registration.

(iv) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for failure to pay Service Tax & suppressing the facts and contravening provisions or rules with intent to evade payment of Service Tax.

(v) Penalty should not be imposed upon them under Section 77(1)(c)(i)(ii)(iii) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for not furnishing the information/not producing the documents/not appearing when issued with a summon before a Central Excise officer.

(vi) Penalty should not be imposed upon them under Section 77(1)(d) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for fails to pay the Service Tax electronically.

(vii) Penalty should not be imposed upon them under Section 77(2) of the Act read with Section 142 & 174 of CGST Act, 2017 for not filing of statutory Service Tax Returns for the Financial Year 2015-16."

5. The Adjudicating Authority records that the party vide letter dated 21.12.2020 submitted following documents:-

1. Form 26AS for the Financial Year 2015-16.
2. I.T.R. for the Financial Year 2015-16 acknowledgement.
3. Copy of Balance sheet & Profit & Loss Account for the Financial Year 2015-16.

6. It is also recorded by the learned Adjudicating Authority that the personal hearing was fixed on 29.11.2021, 06.12.2021, 13.12.2021 and 20.12.2021 but the party did not appear in the personal hearing and accordingly the Adjudicating Authority proceeded to pass the order *ex parte* and confirming the demand as proposed in the SCN and also imposed penalties as proposed in the SCN. On appeal to the learned Commissioner (Appeals), the learned Commissioner (Appeals) observed that the OIO dated 23.12.2021 was dispatched by Post and it is also recorded that the said Order-in-Original never returned back undelivered as informed by the Department. However, no evidence for dispatch of the Order-in-Original has been brought on record. The learned Commissioner (Appeals) considered the date of dispatch as the date of delivery and accordingly, the appeal filed by the Appellant on 16.08.2022 has been rejected on the ground of limitation. Hence, the present appeal before the Tribunal.

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

8. I find that the Order-in-Original dated 23.12.2021 passed by the learned Assistant Commissioner CGST & Central Excise Division-II, Lucknow was received by the Appellant from the Range Superintendent on 19.07.2022 and the appeal was filed before the learned Commissioner (Appeals) on 16.08.2022. It is the case of the Appellant that the learned Commissioner (Appeals) failed to appreciate that the Range Superintendent vide letter dated 19.07.2022 informed the Appellant that the Order-in-Original was sent by Post on 31.12.2021 and the said order was never returned back as undelivered.

9. The learned Consultant appearing on behalf of the Appellant vehemently argued that the learned Commissioner (Appeals) has failed to appreciate that the Department has not brought any record evidencing that the O-I-O was dispatched at proper address of the Appellant and was delivered to the Appellant. It is his submission that requirements of Section 37C(1) of Central Excise Act, 1944, in case of service of speed post as proof of delivery has not been brought on record, hence rejection of the appeal on the presumption is *par se* bad in law and is not

sustainable. In support of his submissions he relied upon the following judgements:-

- R. P. Casting Pvt. Ltd. vs. CESTAT, New Delhi [2016 (344) E.L.T. 168 (Raj.)].
- Duggar Fibre Pvt. Ltd. vs. Commissioner of Central Excise, CUS & CGST, Delhi [2021 (378) E.L.T. 293 (Tri-Del.)].
- Regent Overseas Pvt. Ltd. vs. Union of India [2017 (6) G.S.T.L. 15 (Guj.)].

10. Having considered the rival submissions, I find that the impugned order has been passed on the presumption by the learned Commissioner (Appeals) that the Order-in-Original dated 23.12.2021 was served on the Appellant, on the basis of the evidence of dispatch and the contention of the Department that such dispatch was not returned back by the Post office. I find that the learned Commissioner have erred in making the presumption in the absence of proof of delivery not produced by the Department. During the relevant time as per the provisions of Section 37C(1)(a), any order passed under the Act was to be served through Registered Post or Speed Post to the person for whom it was entitled or his authorized agent with acknowledgement due as proof of delivery. Thus, it was incumbent upon the Revenue to produce evidence of delivery or service which is the mandate as per the Section 37C(1)(a) of the Act. In absence of proof of delivery of order dated 23.12.2021, the same cannot be deemed as served on the Appellant as has been held by the Hon'ble Rajasthan High Court in the case of R. P. Casting Pvt. Ltd. (Supra) and also by the Hon'ble Gujarat High Court in the case of Regent Overseas Pvt. Ltd. (Supra) and also by the Hon'ble Supreme Court in the case of Saral Wire Craft vs. CCE & ST 2015 (322) E.L.T. 192 (S.C.). In absence of such proof of delivery, it is held that the presumption is not sustainable and accordingly I hold that the appeal of the Appellant cannot be held as barred by limitation.

11. I find that the facts of the present case are squarely covered by the aforesaid decision of the Hon'ble High Court and

the Hon’ble Supreme Court. I hereby set aside the impugned order and find it appropriate to remand the matter to the learned Commissioner (Appeals) to decide the appeal on merits after giving proper opportunity to the Appellant without further visiting the aspect of limitation.

12. The appeal filed by the Appellant is allowed by way of remand to the learned Commissioner (Appeals).

(Dictated and pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS