CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70468 of 2024

(Arising out of Order-In-Appeal No. 106-ST-ALLD-2024, dated - 08/02/2024 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad)

M/s Ashwani Kumar Raja **.....Appellant**
(A.R. Assocaiates
Bina Road, Auri, Anpaara
Sonbhadra, Uttar Pradesh 231225)

VERSUS

Commissioner, CGST & Central Excise, Varanasi
....Respondent
(Varanasi)

APPEARANCE:

Shri R.L. Yadav, Advocate for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70318/2025

DATE OF HEARING : 22.05.2025
DATE OF DECISION : 22.05.2025

P. K. CHOUDHARY:

Heard both the sides and perused the appeal records.

2. I find that the Order-In-Original dated 05.03.2020 was dispatched to the Assessee on 05.3.2020 itself. It is the case of the Assessee that the above order was never received by him on the plea, that their address which was recorded in the records of the Department had changed, but no evidence as such is brought on record, whereby intimation has been given to the Department regarding change of address of the Assessee. Further I observe that the ST-5 Form being memo of appeal filed before the Tribunal, the Assessee has mentioned his address as

"Bina Road, Auri, Anpaara, Sonbhadra, Uttar Pradesh". As regards the period of the dispatch of the Order-In-Original, it was the peak period of the COVID pandemic and the entire country was under lockdown from various dates and even the Hon'ble Supreme Court had *suo moto* in Writ Petition (CIVIL) No.3 of 2020 issued an order for condoning the delay in filing of the appeal before various forums which should have been kept in mind by the Learned Commissioner (Appeals) while disposing of this appeal as not maintainable since that order of the Hon'ble Supreme Court is binding on all the Appellate Authority and courts. Further, no evidence has been brought on record regarding service of the Speed-Post on the Appellant-Assessee.

3. Further, I find that the Central Board of Indirect Taxes & Customs issued instructions vide F.No.390/Misc./09/2023-JC dated 16.03.2023 which reads as under:-

> *"Reference is invited to CESTAT FINAL ORDER NO. 51227/2022 dated 22.12.2022 passed by Hon'ble Tribunal, Principal Bench, New Delhi on the above subject.*
>
> *2. The issue before CESTAT for consideration was to determine the date of service/communication of the orders under Section 35 (1) of Central Excise Act, 1944 for counting period of limitation for filing appeal before the Commissioner (Appeals).*
>
> *3. As per the relevant provisions of law, an appeal can be filed before the Commissioner (Appeals) under Section 35 (1) of the Central Excise Act, 1944 within sixty days from the date of the communication of such order. Further, Section 37 C (2) of the Act envisages "any decision, order, 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 or order passed or any summons or notice is tendered or delivered by post..."*
>
> *4. In the instant case, the Commissioner (Appeals) relied upon proof of despatch instead of the date on which Order was served/ delivered. In this connection, CESTAT held that the date on which the Order was served should be relevant*

date for the purpose of filing Appeal before the Commissioner (Appeals) under Section 35 (1) read with Section 37 C (2) of the Act. CESTAT observed in para 13 as under:

> *"...for the purpose of determination of the limitation period, the Department relies upon the date of despatch of the order, whereas it should be the date on which such order were served, which is necessary. This date can be ascertained from the tracking report of Postal Department. The Department should, therefore, maintain the postal tracking report in each case for the purpose of determining the limitation period...*

5. Accordingly, the Order of the Commissioner (Appeals) was set aside and the matter was remanded back to Commissioner (Appeals), so as to decide on merits as the Commissioner had dismissed the assessee's Appeal on limitation only.

6. In light of the above, all Pr. Chief Commissioners/ Chief Commissioners are requested to issue instructions to all adjudicating authorities and Commissioner (Appeals) for suitable arrangement to be made for the printout of the tracking report/acknowledgement to be kept in the file for any future reference.

7. Further, the CESTAT order in para 13 has pointed out that

> *"... even the date on which the order was passed has not been mentioned either at the start of the order or where the Assistant Commissioner has signed the order......*
>
> *....... This is a fact which needs to be brought to the notice of the Adjudicating Officers so that in future the date on which the order is passed is specifically mentioned in the order.."*

8. Therefore, it is also requested to issue suitable instructions to all adjudicating as well "

4. I find that the appeal was filed before the First Appellate Authority on 08.09.2023. Since the Order-In-Original was received by the Appellant-Assessee on 11.07.2023, he was required to file the appeal before the First Appellate Authority on

or before 11.09.2023, and accordingly, the appeal has been filed within the statutory period of 60 days.

5. Under these facts and circumstances, I find it appropriate to remand the matter to the learned Commissioner (Appeals) for decision on merits without further visiting the aspect of limitation. The Appellant-Assessee is directed to cooperate in the *denovo* proceedings and avoid taking unnecessary adjournments. All issues are kept open.

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

(Dictated and pronounced in open court)

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

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