IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

C/70005/2018-CU[SM]

(Arising out of Order-in-Appeal No.NOIDA-EXCUS-002-APP-851-17-18 dated 15.09.2017 passed by Commr.(Appeals) of Central Goods & Services Tax(Appeals), Noida.)

National Products

…APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Noida

RESPONDENT (S)

APPEARANCE

Adjournment Request for the Appellant (s)
Shri Gyanendra Kumar Tripathi, AC(A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)

DATE OF HEARING/DATE OF DECISION : 09.07.2018

FINAL ORDER NO.71365/2018

Per Mrs.Archana Wadhwa :

After rejecting the request for adjournment, I proceed to decide the appeal itself inasmuch as a short issue is involved. Accordingly I have heard ld.A.R. appearing for the Revenue and have gone through the impugned order.

2. Commissioner(Appeals) has rejected the appeal filed by the appellant on the point of limitation by observing that the impugned order was passed by the Joint Commissioner on 30.04.2015 and the appeal stands filed on 02.11.2016 i.e. after the normal period of 60(sixty) days from the date of communication of the order as also beyond the period for which the Commissioner(Appeals) is empowered to condone the delay.

3. I find that the appellants have taken a categorical stand that the order passed by the Joint Commissioner was not received by them. It was only subsequently when they received a letter from their jurisdictional Assistant Commissioner on 28.07.2016, directing them to deposit the disputed amount along with interest, they came to know about the passing of the order. Accordingly they approached the Revenue for providing them copy of the order which was supplied by the Assistant Commissioner under the cover of his letter dated 01.09.2016 and thereafter the appeal was filed.

4. On going through the impugned order of Commissioner(Appeals) I find that he has not accepted the assessee's stand on the ground that the appellant have not substantiated their claim of receiving the impugned order after a period of more one year. However, no efforts stand made by Commissioner(Appeals) to find out the fact as to whether the impugned order was served to the appellant by Speed Post or under Regd. A.D. or as to whether the office of the original adjudicating authority has any evidence to show that the copy of the order was served upon the appellant. Undisputedly the period of limitation starts from the date of receipt of the impugned order and it is also a settled law that the orders are required to be served upon the assessee by registered A.D., as per the provisions of Section 37C. As such it was obligatory on the part of the appellate authority to make enquiries from the office of the original adjudicating authority as regards the service of the impugned order. On the other hand, even the assessee could have substantiated their claim from making enquiries from the postal authorities as regards the service of the impugned order.

5. In view of the above observations, I deem it fit to set aside the impugned order and remand the matter to Commissioner(Appeals) to re-

decide the issue afresh, after bringing on record the factum of service of the impugned order on the assessee. Appeal is thus allowed by way of remand.

(Dictated and pronounced in the open Court.)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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