

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL No.ST/70708/2016-ST[DB]

(Arising out of Order-in-Appeal No.NOI/SVTAX/000/APPEALS-I/601/2015-16 dated 29/03/2016 passed by Commissioner (Appeals-I), Central Excise, Meerut)

M/s Hotline Electronics Ltd. ...Appellant

Vs.

Commissioner, Service Tax, Noida ...Respondent

Appearance:

Absent On Call

Shri Shiv Pratap Singh, Deputy Commissioner (AR),

for Appellant

for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing/ Decision : 29/11/2018

FINAL ORDER NO.72797 / 2018

Per: Archana Wadhwa

Nobody appeared, we have heard learned AR and have gone through the impugned order.

2. Commissioner (Appeals) has rejected the appeal on the issue of time bar by observing that the impugned order was passed by the Adjudicating Authority on 31.03.2015, whereas the appeal stand filed before him on 25.01.2016. He has observed that the date of receipt of the impugned order shown by the appellant in their appeal form filed before him is 07.12.2015 and cannot be accepted to be the correct date

inasmuch as the impugned order was dispatched by speed-post on 31.03.2015 and must have been received by them within a period of 15-20 days. He has also observed that show cause notice issued to them was received within a period of 15 days and as such order sent by speed-post is expected to have been received within the period of 15 days. Inasmuch as the appeal stand filed beyond the condonable period and as he has no power to condone the delay beyond the prescribed period under the Act, he rejected the appeal as barred by limitation.

3. On the other hand the appellant had contended that the impugned order was procured by them personally on 07.12.2015. In support, an affidavit of an employee stands placed on record stating that he went to concerned office and procured a copy of the same on 07.12.2018. As such the appeal filed on 25.01.2016 is well within the period of 3 months prescribed under the law, from the date of receipt of the order.

4. Going through the impugned order shows that the Appellant Authority has gone by the report of the office of the Assistant Commissioner indicating the dispatch of the order by Speed-post. There is no evidence of receiving of the order by the appellant. In terms of the provisions of Section 37C of Central Excise Act, 1944, any decision or order passed by an Authority shall be served by registered post with

acknowledgement Due or by speed-post with proof of delivery. As such it is seen that the said Section requires serving of any order either by registered post or by speed-post with proof of delivery. However, there is no proof of delivery produced by the Revenue in the present case. In such a scenario, Commissioner (Appeals) was not right by taking the date of dispatch as the proof of delivery and to calculate the period from the said date by considering the same as relevant date. On the other hand the appellant have produced an affidavit of their employee to substantiate their plea that the impugned order was received by them on 07.12.2015 only.

5. In the absence of any proof of delivery produced by the Revenue, we have to accept the date of receipt as shown by the appellant, in which case the appeal filed on 25.01.2016 would be within time. By holding so, we set aside the impugned order and remand the matter to Commissioner (Appeals) for decision on merits.

(Pronounced & Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)