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

ST/70368/2018-CU[DB]

(Arising out of Order-in-Appeal No.49-ST/APPL/KNP/ADG-NACIN/2017-18 dated 26.02.2018 passed by Additional Director General, National Academy of Customs, Indirect Taxes and Narcotics, Kanpur.)

M/s. Shankar Lal Mishra

…APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Kanpur

RESPONDENT (S)

APPEARANCE

Shri Dharmendra Srivastava (C.A.) for the Appellant (s)
Shri Rajeev Ranjan (Addl.Commr.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 07.03.2019

FINAL ORDER NO.70496/2019

Per Mrs.Archana Wadhwa :

After hearing both sides we find that Commissioner(Appeals) has rejected the appeal as barred by limitation. It is seen that the order impugned before Commissioner(Appeals) was Order-in-Original No.10/ST/ADJ/AC/2016 dated 23.08.2016. According to the appellant the same was received by them on 03.10.2016 and the appeal was filed thereagainst on 30.12.2016 with a delay of 28(twenty eight) days.

2. Commissioner(Appeals) has gone through the condonation of delay application and has observed that the date of the order shown in

the said application is 20.09.2016. As such it becomes clear that the appellant is not talking about the order impugned before him, but is referring to some other Order-in-Original. As such he has observed that inasmuch as the appellant is talking about the date of receipt of the said Order-in-Original dated 20.09.2016 as on 03.10.2016 and the date of receipt of the order impugned before him, which was dated 23.08.2016 is incorrect. He also made certain enquiries from the office of the Asstt.Commissioner and found that the impugned order dated 23.08.2016 was dispatched to the appellant on 28.08.2016 and has not been received back by the office of the Asstt.Commissioner.

3. Clarifying on the above, learned C.A. appearing for the appellant submits that the date of the order was wrongly mentioned in the COD application as 20.09.2016. In fact the order dated 23.08.2016 only was received by them on 03.10.2016 and there was a delay of only 28(twenty eight) days in filing the appeal before Commissioner(Appeals), which delay is condonable being within his powers.

4. On examining the COD application we note that reference therein stands made to Order-in-Original No.10/ST/ADJ/AC/2016 dated 23.08.2016. It is only at one place in the next paragraph that date has been shown wrongly by the appellant as 20.09.2016. We further note that there is no verification of the factual aspect of receipt of the impugned order by the appellant. As such we deem it fit to set aside the impugned order and remand the matter to Commissioner(Appeals) for verifying date of receipt of the order and in the absence of any

evidence to the contrary, to accept the date of receipt as 03.10.2016, in which case the delay would be only of 28(twenty eight) days and would be within the powers of Commissioner(Appeals) to condone.

Appeal is allowed by way of remand in above terms.

(Dictated and pronounced in the open Court.)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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