CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70809 of 2024

(Arising out of Order-in-Appeal No. 275-ST-APPL-LKO-2023, dated - 06/04/2023 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

M/s Jagdambe Communication Pvt. Ltd. **.....Appellant**
(211, Reserve Police Line, Faizabad Road,
Lucknow, UP - 226007)

VERSUS

Commissioner, Central Excise & Service Tax, Lucknow
....Respondent
(Hall No.3 5th & 11th Floor
Lucknow, Uttar Pradesh, 226024)

APPEARANCE:

Shri Dushyant Kumar, Consultant for the Appellant
Ms. Chitra Srivastava, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70525/2025

DATE OF HEARING : 31.07.2025
DATE OF DECISION : 31.07.2025

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No. 275-ST-APPL-LKO-2023, dated -06/04/2023 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow.

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

3. Learned Commissioner (Appeals) has dismissed the Appeal before him solely for the reason that the appeal was filed beyond the period prescribed under Section 85(3A) of the Finance Act, 1994.

4. Under section 85(3A) of the Finance Act, an appeal has to be presented within two months from the date of receipt of the decision, but the Commissioner (Appeals), if he is satisfied that the Appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.

5. I find that the Order-In-Original dated 19.03.2021 was dispatched on 19.03.2021 through Speed-Post and which was never returned back. However, it is the case of the Appellant-Assessee that the Order-In-Original dated 19.03.2021 was never received by them. It is also the plea of the Appellant that only after the recovery proceedings were initiated vide Letter dated 27.06.2022, they came to know about the passing of the Order-In-Original and applied for a certified copy of the same, which was finally served on them on 25.07.2022 and the appeal was filed on 21.10.2022, before the First Appellate Authority.

6. In the first instance, the order was not dispatched by registered post. The order was sent by speed post and under the amended section 37C, there should be proof of delivery also. In the present case, admittedly, there is no proof of delivery since what has been stated by the Assistant Commissioner in his comments is that the speed post that was sent to the Appellant did not return to the office.

7. In this view of the matter, Shri Dushyant Kumar, learned Counsel appearing for the Appellant is justified in asserting that as the order was actually received by the Appellant on 25.07.2022 and the period of limitation would start to run from the said date.

8. In the present case, the Appellant has claimed that the order was received on 25.07.2022 when the Appellant contacted to the Department. The appeal was therefore filed within the condonable period from the date of receipt of the order.

9. I observe that there was worldwide pandemic during the period when the Order-In-Original dated 19.03.2021 was passed and everything had come to a standstill and however, the Hon'ble Supreme Court had taken cognizance of the situation and issued directions to all the concerned to take into consideration the difficulties faced by everyone and to provide the maximum relaxation possible to meet the ends of justice. Hence this aspect should not be ignored by any of the authorities and a lenient view should be taken in such situation which were grave for each one of us.

10. Considering the overall conditions prevailing in this case, I find that there is no occasion to doubt the submissions of the Assessee-Appellant. The date of receipt of the Order-In-Original i.e 25.07.2022 should be considered. The appeal filed by the Appellant though beyond the statutory period of 02 months but within the condonable period of one month has been considered and I condone the delay in filing of the appeal before the First Appellate Authority.

11. In view of the above discussions, I find it appropriate to set aside the impugned order and remand the matter to the learned Commissioner (Appeals) to the decide the appeal on merits without further visiting the aspect of limitation. Needless to mention that all issues are kept open and the Appellant is directed to cooperate in the remand proceedings and not to seek unnecessary adjournments. The appeal is allowed by way of remand to the learned Commissioner (Appeals).

(Dictated and pronounced in open court)

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

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