CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70010 of 2023

(Arising out of Order-in-Appeal No.735-ST-APPL-LKO-2022, dated - 28/09/2022 passed by Commissioner (Appeals), CGST & Central Excise, Lucknow)

M/s Bhor Communications Private Limited .....Appellant
(302, Suparshvanath Apartment,
Scheme No 54, Indore, Madhya Pradesh-452010)

VERSUS

Commissioner, CGST & Central Excise, Agra

....Respondent
(113/4, Sanjay Place, Agra, Uttar Pradesh-282002)

AND

Service Tax Appeal No.70011 of 2023

(Arising out of Order-in-Appeal No.734-ST-APPL-LKO-2022, dated - 28/09/2022 passed by Commissioner (Appeals), CGST & Central Excise, Lucknow)

M/s Bhor Communications Private Limited .....Appellant
(302, Suparshvanath Apartment,
Scheme No 54, Indore, Madhya Pradesh-452010)

VERSUS

Commissioner, CGST & Central Excise, Agra
....Respondent
(113/4, Sanjay Place, Agra, Uttar Pradesh-282002)

APPEARANCE:

Shri Brijesh Verma, Advocate & Ms. Prerna Jain, Advocates for the Appellant
Ms. Chitra Srivastava, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70526-70527/2025

DATE OF HEARING : 31.07.2025
DATE OF DECISION : 31.07.2025

P. K. CHOUDHARY:

Since the dispute in both the appeals is common, they are taken up together for hearing and disposal.

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

3. Learned Commissioner (Appeals) has dismissed the Appeals before him solely for the reason that the appeals were 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. It is the case of the Appellant that they never received the Show Cause Notice and the Order-In-Original. It was only when the recovery proceedings were initiated and intimated to them by an E-mail dated 20.12.2021. Then they got aware of the entire proceedings and certified copy was obtained on 03.01.2022 and appeal was filed before the First Appellate Authority on 31.01.2022.

6. I find that learned Commissioner (Appeals) in the impugned Orders-In-Appeal has observed that the Orders-In-Original dated 27.03.2019 was dispatched through Speed-Post. Accordingly, he dismissed the appeals without going into the merits of the case on the ground of limitation.

7. In the first instance, the orders were not dispatched by registered post. The orders were 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.

8. In this view of the matter, Shri Brijesh Verma, learned counsel appearing for the Appellant is justified in asserting that as the orders were actually received by the Appellant on 03.01.2022 and the period of limitation would start to run from the said date.

9. I find that apart from the observations of the learned Commissioner (Appeals) that the Orders-In-Original dated 27.03.2019 were dispatched by the Department through speed-post on 29.03.2019, there is no proof of delivery brought on record by the Learned Commissioner (Appeals).

10. In the present case, the Appellant has claimed that the orders were received on 03.01.2022 when the Appellant contacted the Department. The appeals were therefore filed within the condonable period from the date of receipt of the order.

11. The impugned orders passed by the Commissioner (Appeals), therefore, deserves to be set aside and is set aside. The Commissioner (Appeals) shall now decide the appeals on merits.

12. In view of the above discussions, I find it appropriate to remand the matter to the learned Commissioner (Appeals) to decide both the appeals 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 appeals are 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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