CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 70744 of 2018

(Arising out of Order-in-Appeal No. 185/ST/Alld/2018 dated 23/03/2018 passed by Commissioner (Appeals) CGST & Central Excise Appeal Commissionerate, Allahabad)

M/s Devraj .....**Appellant**

(North Kakkarmatta, DLW, Varanasi)

VERSUS

Commissioner of CGST, ...**Respondent**

(Civil Lines, Allahabad)

APPEARANCE:

Shri Vipin Shankar Gupta, Advocate, for the Appellant
Shri Pawan Kumar Singh, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 70859/2019

Date of Hearing : 18/04/2019
Date of Decision : 18/04/2019

PER: ANIL G. SHAKKARWAR

After hearing both the sides duly represented by Shri Vipin Shankar Gupta – ld. Counsel for the appellant & Shri Pawan Kumar Singh – ld. Superintendent for the Revenue, I note that the ld. Commissioner (Appeals) has rejected the appeal before him as time barred. I note that the appellant had claimed to have received Order-in-Original on 16.06.2017 and the appeal before Commissioner (Appeals) was filed on 02.08.2017. On perusal of the record, I note that on 16.06.2017 Superintendent (Adjudication) of Central Excise, Commissionerate – Allahabad informed the present counsel of the appellant that the said

Order-in-Original was sent through registered post on 12.03.2013. The ld. Counsel for the appellant has argued the requirement under Section 37C of the Central Excise Act, 1944 was that the communication is to be sent through registered post AD. I find as per record that the said Order-in-Original was not sent through registered post AD. Therefore, I hold that service claimed to have been effected on 12.03.2013 is not established. Therefore, I hold that the Order-in-Original was served on the appellant on 16.06.2017. Since the matter was not decided on merit by ld. Commissioner (Appeals), I set aside the impugned order, which was passed, stating that the appeal before Commissioner (Appeals) was hit by limitation and direct the ld. Commissioner (Appeals) to decide the appeal before him on merit. Appeal is allowed by way of remand.

(Dictated and pronounced in open court)

Sd/-

(Anil G. Shakkarwar)
Member (Technical)

Asnari