CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70003 of 2025

(Arising out of Order-in-Appeal No.382/ST/ALLD/2024 dated 24.07.2024 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad)

M/s Jaiswal Cold Storage, **.....Appellant**
(C/o Shri Brijesh Kumar Jaiswal,
Partner- M/s Jaiswal Cold Storage,
260, Dilezakpur, P.S. Kotwali,
District-Gorakhpur-273001)

VERSUS

Commissioner of Central Excise &
CGST, Varansi **....Respondent**
(9, M.A. Road, Varanasi)

APPEARANCE:

Shri Kartikeya Narain, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70669/2025

DATE OF HEARING : 19.09.2025
DATE OF DECISION : 19.09.2025

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.382/ST/ALLD/2024 dated 24.07.2024 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad.

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

3. I find that the learned Commissioner (Appeals) has not decided the appeal on merits but rejected the same as not maintainable on account of delay in filing of the appeal. I find from the records that the Order-in-Original dated 30.03.2022 was dispatched by registered Post with Consignment No.RU707915360IN dated 04.04.2022.

4. It is the case of the Department that the said consignment, sent through Registered Post, was never returned back undelivered. However, it is the submission of the Appellant that since they had closed the business and the business premises of M/s Jaiswal Cold Storage, Gola Bazar, Gorakhpur was lying barren, there was no person available on the premises. It is also submitted that the order dispatched by the Department was never received by the assessee and it was only when recovery notice dated 01.04.2024 from the Department received at the residence of the partner by hand on 02.04.2024, that the assessee came to know that the Order-in-Original dated 30.03.2022 was passed and an amount of Rs.5,39,870/- has been confirmed and penalty of equal amount has also been imposed. The Appellant on 05.04.2024 filed an application before the Superintendent (Recovery) Central G.S.T. Division, Gorakhpur-II for obtaining a "Certified True Copy" of the Order-in-Original dated 30.03.2022 and the same was handed over to the assessee on 05.04.2024. Thereafter, the appeal was filed before the first Appellate Authority on 16.05.2024.

5. On facts as stated and under the circumstances of the case, it is observed that the Appellant assessee did not receive Order-in-Original dated 30.03.2022 dispatched to them by registered Post on 04.04.2022.

6. Going through the impugned order shows that the Appellate Authority has gone by the report of the office of the Assistant Commissioner indicating the dispatch of the order by Registered 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.

7. In the absence of any proof of delivery produced by the Revenue, I have to accept the date of receipt as shown by the Appellant, in which case the appeal filed on 16-05-2024 would be within time.

8. I find that the facts and findings of the present case are squarely covered by the abovementioned decision of the Tribunal. In view of the above discussion, I find it appropriate to remand the matter to the learned Commissioner (Appeals) to decide the appeal on merits without further visiting the aspect of limitation. The appeal filed by the Appellant is allowed by way of remand to the Commissioner (Appeals).

(Dictated and pronounced in open court)

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

LKS