CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.70512 of 2018

(Arising out of Order-in-Appeal No.RJ/29/2018 dated 27/02/2018 passed by Commissioner (Appeals), Central Goods & Service Tax(Audit) Commissionerate, Noida)

M/s H.V. Metal Arc Pvt. Ltd.
P-1, P-2, Site-V,
Surajpur Industrial Area,
Kasna,
Greater Noida (U.P.) **.....Appellant**

VERSUS

Commissioner of Central GST & Central Excise, Noida
.....Respondent

APPEARANCE:

Shri S.C. Kamra, Advocate & Shri Kartikeya Narain, Advocate for Appellant
Shri P.K. Singh, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 21 June, 2019
DATE OF PRONOUNCEMENT : 11 July, 2019

FINAL ORDER NO. **71327 / 2019**

ARCHANA WADHWA

After hearing both the sides duly represented by learned advocates Shri S.C. Kamra & Shri Kartikeya Narain appearing on behalf of the appellant and learned AR, Shri P.K. Singh appearing on behalf of the Revenue, we note that Commissioner (Appeals) has dismissed the appeal on the ground of limitation by observing that the order impugned before him passed on 29 April, 2016 was served upon the peon of the appellant on 06 May, 2016. As such the appeal filed on 24 April, 2017 was barred by limitation as there was delay of 292 days for which Commissioner (Appeals) has no powers to condone.

2. On the other hand the appellant's contention is that the Order-In-Original was received by them on 08 February, 2017 when the director of the appellant company personally obtained it. It was their contention that service of the order on the peon of the appellant cannot be held to be a proper service in terms of the provisions of Section 37C of the Central Excise Act. For the above proposition they have relied upon the Hon'ble Supreme Court decision in the case of M/s Saral Wire Craft Pvt. Ltd. V/s Commissioner of Customs, Central Excise & Service Tax reported as 2015 (322) E.L.T. 192 (S.C.). It stands held in the said order that tendering of order to unauthorized 'Kitchen Boy' is not a valid service for computing period of limitation. The Hon'ble Supreme Court observed that rejection of appeal on the ground of limitation only, on question of power with Commissioner (Appeals) for delay condonation, without ascertaining factum of date of actual service of order is gross miscarriage of justice. The affected party requires to be served meaningfully and realistically.

3. It is seen that the service of the order, as observed by Commissioner (Appeals) is only to the peon of the appellant. Whether the peon was authorized to receive order or not is a question to be decided in the factual background and in the light of the law declared by the Hon'ble Supreme Court in the above referred case of the Supreme Court in the case of M/s Saral Wire Craft Pvt. Ltd. (Supra).

4. As such we set aside the impugned order and remand the matter to Commissioner (Appeals) for fresh decision on

limitation in the light of the law declared by the Hon'ble Supreme Court or any other decision upon which the appellant may choose to rely upon. Appeal is thus allowed by way of remand.

(Order Pronounced in the open Court on 11 July, 2019)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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