

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70709 of 2025

(Arising out of Order-in-Appeal No.385/ST/ALLD/2024 dated 25.07.2024 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad)

Shri Nand Kishore Prasad,

.....Appellant

(Kidwai Nagar, Chandauli-232200 U.P.)

VERSUS

**Commissioner of Central Excise &
CGST, Varanasi**

....Respondent

(9 Maqbool Alam Road, Near Zila
Kutchehari, Varanasi-221002)

APPEARANCE:

Shri Saurabh Agarwal, Chartered Accountant for the Appellant

Shri Santosh Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70853/2025

DATE OF HEARING : 08.12.2025

DATE OF DECISION : 08.12.2025

Heard both the sides and perused the appeal records.

2. I find that the Order-in-Original dated 18.03.2023 passed by the Assistant Commissioner, CGST & Central Excise, Division-Varanasi, was received by the Appellant on 06.12.2023 from the Range Superintendent and the appeal was filed before the first Appellate Authority on 05.03.2024. It is the case of the Appellant that the learned Commissioner (Appeals) failed to appreciate that the Assistant Commissioner, CGST & Central Excise, Division- Varanasi, vide the letter dated 10.07.2024 informed that the Order-in-Original was sent to the Appellant's address by Speed Post on 23.03.2023 and the said order was never returned back as undelivered.

3. Learned Chartered Accountant appearing on behalf of the Appellant vehemently argued that the learned Commissioner (Appeals) has failed to appreciate that the Department has not brought on record any evidence that the Order-in-Original was dispatched at proper address of the Appellant and was delivered to the Appellant. It is his submission that requirement of Section 37C(1) of Central Excise Act, 1944, in case of service by Speed Post, proof of delivery has not been brought on record, hence rejection of the appeal on the presumption is *par se* bad in law and is not sustainable. In support of his submissions he relied upon the following judgements:-

- Saral Wire Craft Pvt. Ltd. vs. CCE & ST 2015 (322) E.L.T. 192 (S.C.).
- Shri Gaurav Sahu in Service Tax Appeal No.70031 of 2023 Final Order No.70078/2025 dated 14.02.2025.
- Hotel Elora in Service Tax Appeal No.70386 of 2023 Final Order No.70270/2025 dated 14.05.2025.

4. Having considered the rival submissions, I find that the impugned order has been passed on the presumption by the learned Commissioner (Appeals) that the Order-in-Original dated 18.03.2023 was served on the Appellant, on the basis of the letter of the Assistant Commissioner, CGST & Central Excise, Division- Varanasi, and the contention of the Department that such dispatch was not returned back by the Post Office. I find that the learned Commissioner (Appeals) have erred in making the presumption in the absence of proof of delivery not produced by the Department. During the relevant time as per the provisions of Section 37C(1)(a), any order passed under the Act was to be served either through Registered Post or Speed Post to the person for whom it was entitled or his authorized agent with acknowledgment due as proof of delivery. Thus, it is incumbent upon the Revenue to produce evidence of delivery of service which is a mandate as per the Section 37C(1)(a) of the Act. In absence of proof of delivery of order dated 18.03.2023, the same cannot be deemed as served on the Appellant as has been

held by the Hon'ble Supreme Court in the case of Saral Wire Craft Pvt. Ltd.(Supra). In absence of such proof of delivery, it is held that the presumption is not sustainable and accordingly I hold that the appeal of the Appellant cannot be held as barred by limitation.

5. I find that the facts of the present case are squarely covered by the aforesaid judgement of the Hon'ble Supreme Court. I hereby set aside the impugned order and find it appropriate to remand the matter to the learned Commissioner (Appeals) to decide the appeal on merits after giving proper opportunity to the Appellant without further visiting the aspect of limitation.

6. The appeal filed by the Appellant is allowed by way of remand to the learned Commissioner (Appeals).

(Dictated and pronounced in open court)

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

LKS