CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70738 of 2025

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-86-2025-26 dated 20.06.2025 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Noida)

M/s CPS Security Pvt. Ltd., ...**Appellant**
(1st Floor, 38, Omaxe Arcade Near
Pari Chowk, Distt.-G.B. Nagar-201308)

VERSUS

Commissioner of Central Excise &
CGST, Noida ....**Respondent**
(4th Floor, C-232-A/2, GST Bhawan,
Sector-48, Noida-201305)

APPEARANCE:

Shri Abhinav Kalra, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70012/2026

DATE OF HEARING : 05.01.2026
DATE OF DECISION : 05.01.2026

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.NOI-EXCUS-001-APP-86-2025-26 dated 20.06.2025 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Noida.

2. I find that the learned Commissioner (Appeals) has not decided the appeal on merits but dismissed the same on the ground of limitation.

3. The Order-in-Original dated 19.09.2023 was issued on 20.09.2023. However, again there is noting on the Order-in-Original vis-à-vis "Get it Served". This noting is dated 10.10.2023. It is the submission of the learned Advocate appearing on behalf of the Appellant that there was a phone call sometime in the month of October, 2024 to the Appellant

assessee directing them to visit the office of the Assistant Commissioner CGST, Division-VI Noida to collect the Order-in-Original dated 19.09.2023. After receiving the phone call, the Appellant assessee visited the office and collected the Order-in-Original on 21.10.2024. The appeal was filed before the first Appellate Authority on 12.12.2024 which is well within the statutory period of two months from the date of receiving of the Order-in-Original. However, the learned Commissioner (Appeals) in para 8.1 of the impugned order have observed as under:-

> *"8.1 I observe that as per sub-section (3A) of Section 85 of the Act, an appeal relating to service tax, interest or penalty shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority before the first appellate authority. From the appeal memo (ST-4), I observe that the adjudication order dated 19.09.2023 was received by them on 21.10.2024. The department has dispatched the impugned OIO on 20.03.2023. The appellant is saying that they received it on 21.10.2024 and accordingly have filed appeal on 12.12.2024 against the impugned order dated 19.09.2023. This assertion is not acceptable as the same was sent to his registered address by the department. Therefore, I find that the instant appeal has been filed late. No condonation for the delay has been filed, no explanation as to why & how an order dated 19.09.2023 has been received by them on 21.10.2024 has been furnished. Thus, I find that the appeal has been filed beyond the appealable period of 60 days, even beyond the further condonable period of 30 days."*

4. The short controversy involved in the present appeal is that whether the appeal filed by the Appellant was filed within the prescribed period of limitation specified under Section 35 of the Central Excise Act, 1944 or not. The period of limitation provided under the said Section 35 is '**sixty days from the date of communication of decision or order**'. On one hand the Appellant claims that the Order-in-Original dated 19.09.2023

was communicated to him for the very first time only on 21.10.2024 when the copy of the said order was made available to him whereas on the other hand the impugned order records that the said order was dispatched by Speed Post vide letter dated 20.03.2023.

5. Since the impugned order records that the order dated 19.09.2023 was dispatched by Speed Post, hence it is necessary to refer to Section 37C of the Act, relevant part of which is reproduced here:-

> ***"SECTION [37C. Service of decisions, orders, summons, etc.*** *— (1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served, -*
>
> *(a)* ***by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due*** *[or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] to the person for whom it is intended or his authorised agent, if any;*
>
> *(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;*
>
> *(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.*
>
> *(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post [or courier referred to in sub-section (1)] or a copy thereof is affixed in the manner provided in sub-section (1).]"*

On perusal of the above provision, it seems that it is only when the order, decision, summons, notice or any other communication is sent by a Registered Post or Speed Post or courier with acknowledgement due, it shall be deemed to have been received by the addressee, unless the contrary is proved. Thus, the initial burden to demonstrate that the order was by Speed Post with acknowledgement due is on the revenue. It is only when this initial burden is discharged by the revenue, only then the onus shifts to the addressee to prove to the contrary.

6. I find that the Tribunal and the superior courts have consistently held that since all the notices, decisions, orders, summons etc. should be in compliance of Section 37C, otherwise it leads to miscarriage of justice. **Hon'ble Supreme Court in the case of Saral Wire Craft Pvt. Ltd. Vs. Commissioner of Customs, Central Excise & Service Tax [2017 (50) S.T.R. 237 (S.C.)]** have held as under:-

> ***"10.*** *It is in these circumstances that we are of the clear conclusion that a miscarriage of justice has taken place, in that the Authorities/Courts below have failed to notice the specific language of Section 37C(a) of the Act which requires that an order must be tendered on the concerned person or his authorized agent, in other words, on no other person, to ensure efficaciousness. We must immediately recall the decision in Taylor v. Taylor - (1875) 1 Ch. D 426, rendered venerable by virtue of its jural acceptance and applicable for over a century. It was approved by the Privy Council in Nazir Ahmad v. King Emperor - (1935-36) 63 IA 372 and was subsequently applied in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh - AIR 1954 SC 322, State of UP v. Singhara Singh - AIR 1964 SC 358, Babu Verghese v. Bar Council of Kerala - (1999) 3 SCC 422 and more recently in Hussein Ghadially v. State of Gujarat - (2014) 8 SCC 425. As observed by this Court in Babu Verghese, "it is the basic principle of law long*

> *settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all." The Inspector who ostensibly served the copy of the order should have known the requirements of the statute and therefore, should have insisted on an acknowledgement either by the appellant or by its authorized agent. The Inspector had a statutory function to fulfil, not a mere perfunctory one. The appeals are accordingly allowed and the impugned orders are set aside. In the facts obtaining before us, the computation of the period would commence at least from the date on which the appellant asserts knowledge of its existence, i.e., on 26-7-2012. So computed, the appeal filed before the Commissioner (Appeals) on 22-8-2012 would be within the prescribed period of 60 days and should, therefore, have been entertained on merits. It is ordered accordingly. The appellant shall appear before the Commissioner (Appeals) on the forenoon of 3-8-2015. The appeal shall then be taken up and heard on its merits. There shall be no order as to costs."*

7. I find that the impugned order has been passed on the presumption by the learned Commissioner (Appeals) that the Order-in-Original dated 19.09.2023 was served on the Appellant, on the basis of the evidence of dispatch and the contention of the Department that such dispatch was not returned back by the Post office. I find that the learned Commissioner 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 through Registered Post or Speed Post to the person for whom it was entitled or his authorized agent with acknowledgement due as proof of delivery. Thus, it was incumbent upon the Revenue to produce evidence of delivery or service which is the mandate as per the Section 37C(1)(a) of the Act. In absence of proof of delivery of order dated 19.09.2023,

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 vs. CCE & ST 2015 (322) E.L.T. 192 (S.C.). 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.

8. By respectfully following the judgement of the Hon'ble Supreme Court, the date of service of the order as mentioned by the Assessee before the First Appellate Authority i.e. 21.10.2024 has to be accepted by all concerned. I further observe that the appeal before the First Appellate Authority was filed on 12-12-2024 which is well within the statutory period of 60 days and accordingly, remand the matter to the learned Commissioner (Appeals) to decide the appeal on merits without further visiting the aspect of limitation. All issues are kept open. The Appellant is also directed to cooperate in the remand proceedings and not to seek unnecessary adjournments. 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