CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Application (COD) No.70006 of 2021 in Defect Diary No.710432018 with Service Tax Appeal No.70247 of 2021

(Arising out of Order-in-Appeal No.45-ST-APPL-KNP-ADJ-NACIN-2017-18 dated 22/02/2018 passed by Commissioner (ZTI) Additional Director General, National Academy of Customs, Indirect Taxes and Narcotics, Kanpur)

Assistant Commandant, (DDO)
Central Industrial Security Force, (BHEL-Unit) .Appellant
(Jhansi P.O. BHEL Village Khailer-284129)

VERSUS

Commissioner of Central Excise, Kanpur ....Respondent

(117/7, Sarvodya Nagar, Kanpur-208004)

APPEARANCE:

Shri Z.U. Alvi, Advocate for the Appellant
Shri Gyanendra Kumar Tripathi, Authorised Representative for the Respondent

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO-70188 / 2021

DATE OF HEARING : 03 August, 2021
DATE OF DECISION : 03 August, 2021

ANIL CHOUDHARY:

The appellant is in appeal against the impugned Order-in-Appeal No.45-ST-APPL-KNP-ADJ-NACIN-2017-18 dated 22nd February, 2018. The appeal before Commissioner (Appeals) was filed against Order-in-Original dated 26.11.2015 which was dispatched by department on or about 05 January, 2016, and the same was received by the appellant on or about 12th January, 2016. The appellant filed appeal before Commissioner (Appeals) on 01st March, 2016 and the same was within the statutory period of 60 days as the limitation ended on 11th or

12th March, 2016. Further, it is averred in the COD application at para no.4 that the Assistant Commissioner or Original Adjudicating Authority confirmed that the Order-in-Original dated 26.11.2015 was dispatched only on 05th January, 2016.

2. Learned Counsel further states that he could not produce the aforementioned evidence before learned Commissioner (Appeals) as the same was not available with him at the relevant time. Accordingly, Commissioner (Appeals) considered the limitation from the date of Order-in-Original and dismissed the appeal on the ground of limitation.

3. Learned Authorized Representative appearing for the revenue relies on the impugned order.

4. Having considered the rival contentions, we find that there has been error in the impugned order in computing the period of time taken in filing the appeal. We further hold that the appellant have adequately explained that they have filed the appeal within time, and it has been certified by the Adjudicating Authority that Order-in-Original was dispatched only on 5th January, 2016. Accordingly, this appeal is allowed by way of remand. Learned Commissioner (Appeals) is directed to hear the appeal on merit and pass a reasoned order in accordance with law. Appellant is also directed to appear before the Commissioner (Appeals) with a copy of this order and seek opportunity of hearing.

Appeal is allowed by way of remand.

Registry is also directed to grant an appeal number, during the course of the day today.

(Dictated and pronounced in open court)

SD/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

SD/-
(P. ANJANI KUMAR)
Member (Technical)

akp