CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No.70139 of 2023

(Arising out of Order-in-Appeal No.682/ST/ALLD/2023 dated 11.01.2023 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad)

Shri Ramesh Tiwari, **.....Appellant**
(Phase-4, Rapti Nagar, Gorakhpur-273001)

VERSUS

Commissioner of Central Excise &
CGST, Varanasi **....Respondent**
(Varanasi)

APPEARANCE:

Shri Kartikeya Narain, Advocate for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70089/2026

DATE OF HEARING : 13.03.2026
DATE OF DECISION : 13.03.2026

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.682/ST/ALLD/2023, dated 11.01.2023 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad, whereby he has rejected the appeal before him as barred by limitation.

2. The facts of the case in brief are that the Order-in-Original dated 28.03.2022 was dispatched through Speed Post but the same was returned undelivered by the Postal Authority. It is the case of the Appellant that after receiving the order on 05.09.2022, they had filed the appeal before the First Appellate Authority on 19.10.2022 i.e. well within the statutory period of

filing the appeal before the First Appellate Authority. However, the learned Commissioner (Appeals) observed as under: -

> *"4.2 Since there was sufficient time gap in the date of passing the impugned order and of receiving the same, the Assistant Commissioner, CGST & Central Excise Division-Gorakhpur-I was, therefore, requested to clarify regarding mode & date of service of the impugned order, vide letter dated 30.11.2022. The Assistant Commissioner, CGST & Central Excise Division-Gorakhpur-I vide letter dated 09.12.2022, informed that the impugned order was dispatched to the appellant through speed post but the same have been returned undelivered by the postal authority. Subsequently, the copy of impugned order was emailed /served upon the appellant through email-AdvRaunaksingh@gmail.com on 22.04.2022. However, later on the appellant vide their letter dated 05.09.2022 & 29.09.2022 has requested for attested copy of the SCN & impugned order as the same have been misplaced at their end and in response to their request a copy of SCN & impugned order was again provided to the appellant on 05.09.2022 & 03.10.2022 respectively."*

Accordingly, he dismissed the appeal before him as barred by limitation of time. Hence, the present appeal before the Tribunal.

3. Learned Counsel for the Appellant vehemently argues that the Appellant is not registered under the Service Tax regime and therefore, its not clear as to how the Department got the E-mail address of the Appellant. The email id i.e. AdvRaunaksingh @gmail. com on which the Order has been sent by the Department, is not related to the Appellant. Learned Counsel takes us through the provisions of Section 37C of the Central Excise Act, 1944, which lays down the manner in which Orders, Summons & Notices are to be served and submits that the department did not follow due procedure for service of the order.

4. Learned Departmental Authorized Representative appearing on behalf of the Revenue reiterated the findings of the impugned order.

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

6. For the sake of ready reference, Section 37C of the Central Excise Act, 1944 is reproduced below: -

> *"(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).”

7. We find that the Order-in-Original dated 28.03.2022 was dispatched through Speed Post but the same was returned undelivered by the Postal Authority. Subsequently, the copy of the impugned order was E-mailed/served upon the Appellant through email-advraunaksingh@gmail.com on 22.04.2022. However, on the request of the Appellant vide their letter dated 05.09.2022, certified copy of the Order-in-Original was provided by the Department and this fact has been recorded by the Commissioner (Appeal) in the impugned order at para 4.2 which has been reproduced.

8. We find that the provision of Section 37C of the Central Excise Act, 1944 have to be followed in letter and spirit. As per Section 37C, there is no provision to serve the order through E-mail. The date of E-mail cannot be considered as service of the order. On facts as stated above and under the circumstances of the case, it is appropriate to set aside the impugned order and remand the matter to the learned Commissioner (Appeals) to decide the appeal on merits without further going into the delay in filing the appeal before him, as far as possible, within a period of three months. The Appellant is directed to cooperate in the hearing and not to seek unnecessary adjournments.

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

(Operative part of the Order pronounced in open court)

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

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

LKS