CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No.70139 of 2026

(Arising out of Order-in-Appeal No. 309-ST-APPL-LKO-2023, dated - 25.04.2023 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

M/s Ram Construction Co **.....Appellant**
(Prop Shri Arvind Kumar Singh Yadav,
4/21, Sulabh Awas, Sector-4, Gomti Nagar,
Lucknow, Uttar Pradesh 226010)

VERSUS

Commissioner, CGST & Central, Lucknow

....Respondent

(7-A Ashok Marg GST Bhawan,
Lucknow, Uttar Pradesh 226001)

<u>APPEARANCE:</u>

Shri A. P. Mathur, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO<u>.-70122/2026</u>

DATE OF HEARING : 27.04.2026
DATE OF DECISION : 27.04.2026

<u>P. K. CHOUDHARY:</u>

Heard both the sides and perused the appeal records.

2. We find that the learned Commissioner (Appeals) has not decided the appeal on merits but rejected the same on limitation on the ground that the appeal filed by the Appellant before him was delayed beyond the condonable period.

3. It is the case of the Appellant-Assessee that the Order-In-Original dated 09.05.2018, dispatched by the Department on 09.05.2018, was never received by them. It was only, when the accounts of the petitioner were seized in execution proceedings, the Accountant of the petitioner went to the office of the

Respondents and then he came to know that an order has been passed. The Appellant submits that they have received the Order-In-Original dated 09.05.2018 on 31.08.2022 and filed the appeal before the First Appellate Authority on 16.09.2022 which is well within time.

3. We find from the impugned order that the Order-In-Original was dispatched by Speed Post vide Letter C.No.107-STC/RamConst./LKO/RNG-4/2014/608 dated 09.05.2018, but no details of the Speed Post number has been mentioned in the order evidencing delivery of the order.

4. Nothing has been brought on record in this respect. It is an anathema in law to decide the matter without due notice to the concerned party. Every effort must be taken to meaningfully and realistically serve the affected party so as not merely to ensure that he has knowledge thereof but also to enable him to initiate any permissible action. The provisions of Section 37C regarding service of decision etc. are reproduced for ready reference:-

> ***""SECTION 37C.*** *- (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, 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 a copy thereof is affixed in the manner provided in sub-section (1)."

5. We 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. V/s 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."*

6. We find that the impugned order has been passed on the presumption by the learned Commissioner (Appeals) that the Order-in-Original dated 09.05.2018 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. We 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 09.05.2018, 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 We hold that the appeal of the Appellant cannot be held as barred by limitation.

7. 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. 31.08.2022 has to be accepted by all concerned. We further observe that the appeal before the First Appellate Authority was filed within the

statutory period of 60 days and accordingly, We find it appropriate to condone the delay in filing of the appeal before the First Appellate Authority and 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).

(Operative part of the order is pronounced in open court)

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

Sd/-
(RAJEEV TANDON)
MEMBER (TECHNICAL)

Nihal