# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# ALLAHABAD

REGIONAL BENCH - COURT NO.I

**Service Tax Appeal No.70092 of 2024**

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-69-2023-24 dated 22.05.2023 passed by Commissioner (Appeals) CGST, Noida)

**M/s Sai Enterprises,** **.....Appellant**
(Swaley Nagar, Bareilly, U.P.,
Through its Sole Proprietor Rakesh Gupta)

*VERSUS*

**Commissioner of Central Excise &**
**CGST, Meerut-I** **....Respondent**
(Opposite CCS University,
Mangal Pandey Nagar,
Meerut, U.P.-250002)

**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)**
**HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO.- 70287/2026**

DATE OF HEARING : 08.07.2026
DATE OF DECISION : 08.07.2026

**P. K. CHOUDHARY:**

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.NOI-EXCUS-002-APP-69-2023-24 dated 22.05.2023 passed by Commissioner (Appeals) CGST, Noida.

2. The facts of the case in brief are that the learned Commissioner (Appeals) without going into the merits of the case rejected the appeal before him on the ground of barred by limitation of time.

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

4. We find that the Order-in-Original dated 06.09.2022 was dispatched only on 07.09.2022. It is the case of the Appellant that the Order-in-Original was never received by them and it was only upon coming to know of passing of the Order-in-Original dated 06.09.2022, Shri Rakesh Gupta, the Proprietor of M/s Sai Enterprises approached the office of the Assistant

Commissioner of CGST, Division-I, Bareilly and obtained copy of the Order-in-Original. The appeal was filed on 23.12.2022 the actual date of communication of the Order-in-Original dated 06.09.2022 has not been brought on record by either side. The Appellant has also filed an affidavit mentioning that during the period under consideration his father was undergoing medical treatment and finally died on 14.10.2022. It is also submitted that the date of communication of the Order-in-Original dated 06.09.2022 has inadvertently been mentioned in Form ST-4 as dated 06.09.2022 which is not correct.

5. We find that, it is the case of the Assessee that the Order-in-Original dated 06.09.2022 was received by them only on after approaching the office of the Assistant Commissioner of CGST, Division-I, Bareilly. It is also the case of the Assessee that the original copy of the Order-in-Original claimed to have been dispatched by the Department by Dispatch No.V(30)Adj/Bly-I/Sai Enterprises/301/2020/904 dated 07.09.2022 through post was never received by them. However, the learned Commissioner (Appeals) has recorded that the post never returned undelivered by the Postal Authority.

6. In the present case, the Order was not dispatched by Registered Post and there should be proof of delivery also. What is only being stated by the First Appellate Authority in the observation is that the post which was sent to the Appellant containing Order-in-Original did not return to the office.

7. In M**/s Premier Garment Processing Vs. The Customs, Excise & Service Tax Appellate Tribunal, South Regional Bench, Annexe, Nungambakkam, Chennai 600 006 and another [2015 (39) S.T.R. 812 (Mad.)]**, Division Bench of this Court, held:-

> *"It is evident from Section 37C(1) (a) of the Act, prior to 10.5.13, service through speed post was not one of the modes of service of orders, decisions, summons, etc. On and from 10.5.13, Speed post was made as one of the modes of service for orders, decisions, summons, etc., provided it is supported by proof of delivery. Therefore, it is clear that proof of service is mandatory for the service effected through speed post on and after 10.5.13, but prior to 10.5.13, service through speed post not being a recognized/approved mode of service as per the provisions*

*of the Act, any service effected through speed post is not binding on the Appellant/assessee.*

*It is trite law that limitation has to be reckoned only from the date when the actual service has been effected, subject to fulfilling the mandatory requirement of showing proof of delivery.*

8. Hon'ble High Court of Bombay in the case **Amidev Agro Care Pvt. Ltd. vs. UOI [(2012) 26 S.T.R. 299 (Bom.)]** held that order has to be served on the assessee or his agent by Registered Post A.D. or any other mode specified in Section 37C and mere proof of dispatch of order is not sufficient compliance of the said Section.

9. This issue is also squarely covered by the decision of the **Hon'ble Gujrat High Court in Regent Overseas Pvt. Ltd. Vs. Union Of India [2017 (6) G.S.T.L. 15 (Guj.)],** the Appellant states that the Hon'ble High Court at Para 8 held:-

*"8. Thus, under clause (a) of sub-Section (1) of Section 37C of the Act, in case of service of notice by speed post, the same has to be with proof of delivery. To put it differently, service by speed post is valid provided there is proof of delivery. In the present case, it is an admitted position that the letter of personal hearing was sent to the petitioners through speed post; however, though details of date of dispatch, etc., have been produced on record by the learned counsel for the respondents, including tracking number, there is no material by way of proof of delivery to the petitioners; whereas, on the other hand, it is the specific case of the petitioners that they have not received the notice for personal hearing. Thus, In view of the mandate of Section 37C of the Act, which provides for notice by speed post with proof of delivery, it is incumbent upon the respondents to furnish proof of delivery. In the absence of any proof of delivery, it cannot be said that that there is effective service of notice, as contemplated under Section 37C of the Act. (Emphasis). In the absence of service of notice of personal hearing, the petitioners or their representative could not remain present before the adjudicating authority during the course of personal hearing and hence, the impugned order which has been passed ex parte is clearly in reach of principles of natural justice."*

10. In **Saral Wire Craft Pvt. Ltd. vs. CC. CE & ST [2015 (7) TMI 894 – Supreme Court]** where adjudication order was served on kitchen boy of the assessee, it was held to be not a proper service, As per Section 37C of the Central Excise Act,

1944, notice must be served to the person for whom it is intended or his authorized agent under proof of acknowledgement. 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 judgment lays down the pre-requisite for issuance of notice. Any notice issued in violation of Section 37C is not valid. It is worth mentioning that Section 37C has been made applicable to service tax also by virtue of Section 83 of the Finance Act, 1994. Hence, the principle laid down in the judgment shall mutatis mutandis apply to notice served in service tax cases also.

11. In **Jay Balaji Jyoti Steels Ltd. vs. CESTAT, Kolkata [2015 (1) TMI 859 – Orissa High Court]** where order was sent by speed post, it was held that post office issues receipt for both - by Registered Post and by Speed Post. Hence, both have to be treated as registered post in view of Section 28 of Indian Post Office Act, 1898. Only difference between the two is that charges payable are normally higher for 'Speed Post' for delivery at any early date. Further, insertion of 'or by Speed Post with proof of delivery' after the words 'sending it by registered post with acknowledgement due' in Section 37C(1)(a) of Central Excise Act, 1944 w.e.f. 10.05.2013 is clarificatory and procedural amendment. It is curative since various Courts had held that communication of notices through speed post was in consonance with law.

12. We are conscious that if delay is not condoned, the appeal goes out of consideration at the threshold. We find that that Apex Court in the case of **Collector Land Acquisition Anantnag And Another Vs. Mst. Katiji And Others [1987 (28) E.L.T. 185 (SC)]** has held that no one shall prefer to cause prejudice to himself by a belated appeal. We are also conscious of the Apex Court judgment in the case of **N. Balakrlshna Vs. M. Krishnamurthy [2009 (228) E.L.T. 162 (SC)]**. Reason for the delay has primacy over length of delay.

13. In the present case, the learned Commissioner (Appeals) has recorded that copy of the order was provided to the

Appellant vide letter dated 07.09.2022. Though it is simultaneously mentioned that the said Order-in-Original was provided to the Appellant earlier also being dispatched through Post on 07.09.2022 itself. However, in light of entire above discussion, it stands clear that the requirement of the service of any process depends upon the proof of proper receipt of the same by the recipient. The said evidence is admittedly missing on record. Hence, the date of receipt of order as mentioned in Section 85 of Finance Act, 1994 is 15-11-2022. The present appeal was filed on 23.12.2022 i.e. within the statutory period of two months. It is accordingly held that the appeal was filed well within the period of limitation. Resultantly, the order under challenge (Order-in-Appeal dated 22.05.2023) is hereby set aside. The appeal is remanded back to the learned Commissioner (Appeals) for the decision on the merits of the case. It is also required that the appeal be decided within three months from the date of receipt of the present order that too after providing sufficient hearing to the Appellant. Appellant is also directed to appear for personal hearing as and when called for the same. 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/-**
**(K. ANPAZHAKAN)**
**MEMBER (TECHNICAL)**

*LKS*