# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL <u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 61164 of 2018**

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-68/2018-19 dated 23.05.2018 passed by the Commissioner (Appeals), CGST, Jammu]

**M/s V K Sood Engineers and Contractor Pvt Ltd** ......**Appellant**
House No. 20, Sector-6
Panchkula, Haryana 134109

*VERSUS*

**Commissioner of Central Excise and Service Tax, Jammu & Kashmir** ......**Respondent**
Address

**<u>APPEARANCE:</u>**

Shri R.K. Hasija, Advocate for the Appellant

Shri Yashpal Singh, Authorized Representative for the Respondent

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

**FINAL ORDER NO. 61586/2025**

DATE OF HEARING: 13.10.2025
DATE OF DECISION: 13.10.2025

**<u>S.S.GARG:</u>**

The present appeal is directed against the impugned order dated 23.05.2018 passed by the Commissioner (Appeals), whereby the learned Commissioner (Appeals) dismissed the appeal of the appellant on time barred without considering the submissions of appellant on merits.

2. Briefly the facts of the present case are that the appellant is engaged in the manufacture of Built-up Steel Girders by classifying under chapter sub-heading 73081000 of the First schedule to the Central Excise Tariff Act, 1985. The appellant has been availing area based exemption in terms of Notification No. 56/2002-CE dated 14.11.2002 by way of self-credit refund of the duty paid through PLA. The department, during the audit raised the objection that the appellant has inflated the assessable value by merging the expenses incurred on account of freight in assessable value, with the intention of taking higher refund under the said notification by paying the higher amount of duty. On these allegations, a show cause notice dated 01.04.2009 for recovery of erroneous refund of Rs. 1,84,092.64/- along with interest under para 2A(g) of the said Notification read with Section 11A & 11AB of the Act was issued and also proposed penalty under Rule 25 of the Act. The adjudicating authority vide its Order-in-Original dated 27.03.2015 confirmed the demand of Rs. 1,84,092.64 erroneously refunded and ordered recovery of the same along with interest and also imposed equal penalty under Rule 25 read with section 11AC of the Act. Aggrieved by the said order, the appellant filed the appeal on 27.11.2017 which was dismissed as time barred by the impugned order. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4. Learned counsel submits that the impugned order dismissing the appeal of the appellant on time barred is not sustainable in law

as the same has been passed by ignoring the fact that the Order-in-Original was received by the appellant on 04.10.2017 from the superintendent Central Taxes & GST Range-I. Samba at their head office at House No. 20, Sector 6, Panchkula, Haryana on 07.10.2017. He further submits that thereafter they have filed the appeal before the Commissioner (Appeals) on 27.11.2017 which is within the period of limitation prescribed under Section 35 of the Central Excise Act, for filing the appeal before the learned Commissioner (Appeals). He further submits that the appellant had never received the Order-in-Original and the department never sent the order to the present premises of the appellant and when the letter dated 04.10.2017 was received for recovery of arrears by the Superintendent then he came to know about the Order-in-Original.

4.2 The learned counsel further submits that in support of his submissions, the appellant also filed their sworn affidavit before the learned Commissioner stating that they have never received the show cause notice, the hearing notice as their unit was lying closed since, 2009. He further submits that the Department was aware of the address of the appellant because this recovery notice has also been served on the same address. He further submits that the department has not been able to establish on record that show cause notice, hearing notice as well as the Order-in-Original was served on the appellant. He further submits that principle of natural justice have been violated by the department and not serving the show cause notice, hearing notice as well as the Order-in-Original.

He has prayed that the matter may be remanded back to the learned Commissioner (Appeals) to decide the matter on merits.

5. On the other hand, leaned AR reiterated the findings of the impugned order and submits that in this case, the commissioner (Appeals) has dismissed the appeal of the appellant on time barred because there was substantial amount of delay of 977 days in filing the appeal before the Commissioner (Appeals) which is outside the purview of the powers of the Commissioner (Appeals) for condonation.

6. After considering the submissions of both the parties and perusal of the material on record, we find that it is a fact that the present unit was lying closed since 2009 which has been stated in the Sworn affidavit before the Commissioner. We also find that the department has not been able to prove on record as to the service of the show cause notice, hearing notice as well as Order-in-Original to the appellant. We also note that when the appellant received the recovery notice dated 04.10.2017 from the superintendent, Central Taxes & GST Range-I Samba (J&K) on 07.10.2017 then they came to know about the Order-in-Original and filed the appeal on 27.11.2017 which is within the period of two months as prescribed under Section 35F of the Central Act.

7. Since, the appeal before the Commissioner (Appeals) was within time from the receipt of the copy of the Order-in-Original, therefore dismissing the appeal on time bar is not sustainable in law; hence we set aside the impugned order and direct the

Commissioner (Appeals) to decide the matter on merits within a period of two months from the receipt of certified copy of this order.

8. Accordingly, the present appeal is disposed of by way of remand.

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

**(S. S. GARG)**
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**
**MEMBER (TECHNICAL)**

Kailash