

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60200 of 2019

[Arising out of Order-in-Appeal No. 230-232/ST/CGST/APPEAL/GURUGRAM/SG-2018 dated 29.11.2018 passed by the Commissioner CGST (Appeals), Gurugram]

M/s Agro Engineering Works

.....Appellant

36-37, Dlf Industrial Area-ii
Faridabad, Haryana 121003

VERSUS

**Commissioner of Customs, Excise & ST,
Faridabad I**

.....Respondent

Block D, New CGO Complex, NH-IV
NIT Faridabad, Haryana 121001

WITH

Service Tax Appeal No. 60207 of 2019

[Arising out of Order-in-Appeal No. 230-232/ST/CGST/APPEAL/GURUGRAM/SG-2018 dated 29.11.2018 passed by the Commissioner CGST (Appeals), Gurugram]

M/s Agro Engineering Works

.....Appellant

36-37, Dlf Industrial Area-ii
Faridabad, Haryana 121003

VERSUS

**Commissioner of Customs, Excise & ST,
Faridabad I**

.....Respondent

Block D, New CGO Complex, NH-IV
NIT Faridabad, Haryana 121001

AND

Service Tax Appeal No. 60211 of 2019

[Arising out of Order-in-Appeal No. 230-232/ST/CGST/APPEAL/GURUGRAM/SG-2018 dated 29.11.2018 passed by the Commissioner CGST (Appeals), Gurugram]

M/s Agro Engineering Works

36-37, Dlf Industrial Area-ii
Faridabad, Haryana 121003

.....Appellant*VERSUS***Commissioner of Customs, Excise & ST,
Faridabad I**

Block D, New CGO Complex, NH-IV
NIT Faridabad, Haryana 121001

.....Respondent**APPEARANCE:**

Shri N.K. Sharma, Advocate for the Appellant

Shri Kanish Saini, 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. 61756-61758/2025**

DATE OF HEARING: 11.12.2025

DATE OF DECISION: 11.12.2025

S.S.GARG:

These three appeals are directed against the common impugned order dated 29.11.2018 passed by the Commissioner (Appeals), whereby the learned Commissioner (Appeals) disposed of all the three appeals on time bar without going into the merits of the case. Since, all the three appeals have been disposed of by the Common order involving identical facts, therefore, all the three appeals are taken up together for the purpose of discussion and decision.

2. Briefly the facts of the present case are that the appellant is engaged in the manufacture of excisable goods and also registered with Service Tax department as a service provider under the category of GTA services.

2.2 The Audit of the appellant was conducted by the Principal Director of Audit, Chandigarh and it was pointed out that during 2010-11 and 2011-12, the appellant received GTA service amounting to Rs.30,79,472/- but did not pay Service Tax to the credit of the Central Govt. It was also pointed out that ST 3 returns for 04/2010 to 09/2010, 10/2010 to 03/2011, 10/2011 to 03/2012 were not filed and that ST 3 return for 04/2011 to 09/2011 which was due to be filed by 20.01.2012 was filed on 20.09.2012 thus resulting in 243 days delay. A Show Cause Notice No. 8/2012-13 Dt. 01.07.2013 was issued by Deputy Commissioner Service Tax demanding Service Tax amounting to Rs 3,17,186/- alongwith interest and also proposed penalty u/s 77(1), 77(2), rule 7C of Service Tax Rules and Section 78 of the Finance Act, 1994. The demand was confirmed vide Order-in-Original No.:20/NCC/13-14 Dt. 28.02. passed by the Deputy Commissioner.

2.3 Subsequently recurring show cause notices for the periods 2012-13, 2013-14 & 2014-15 were also issued on the same issue for subsequent periods which were adjudicated vide OIO No. 14/HKP/ACE/ST/2014-15 dated 29.04.2015 and OIO No. 04/NDA/ST/2016-17 dated 20.12.2016 again confirming the allegations made. Aggrieved by the Order-in-Original, the appellant

filed the appeals before the Commissioner (Appeals), Gurugram and the Commissioner (Appeals) rejected the appeal of the appellant and confirmed the demand as mentioned below:

Order-in-Original No. & Date	Period Involved	Amount of Service Tax (Demanded Rs.)
20/NCC/13-14 dated 28.02.2014	2010-11 & 2011-12	3,17,186/-
14/HKP/ACE/ST/2014-15 dated 29.04.2015	2012-13	1,20,196/-
04/NDA/ST/2016-17 dated 20.12.2016	2013-14 & 2014-15	1,80,294/- 2,70,440/-

3. Heard both the parties and perused the material on record.
4. Learned counsel for the appellant submits that the impugned order rejecting the appeal of the appellant on time bar is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedents. He further submits that the Order-in-Original dated 28.02.2014 was not served upon the appellant and therefore the appellant could not file the appeal. The appellant came to know about the Order-in-Original when recovery notice was received from the jurisdictional officer, thereafter the appellant requested for supply of the Order-in-Original which was finally supplied to the

appellant on 13.06.2018 and thereafter, the appellant filed the appeal before the learned Commissioner (Appeals) which was within the time period prescribed under the law. He further submits that the learned Commissioner (Appeals) while rejecting the appeal of the appellant has observed as under:

"On enquiry, the Range Officer vide letter C.No. ST/FBD/R-III/Agro Engg./39/2012 dated 04.09.2018 has intimated that the impugned orders were duly dispatched to their registered address and were also put up on notice board as per Section 37C of the Central Excise Act, 1944. Further, a lot of correspondences were made for the figures related to subsequent years and for appearing in the personal hearings, which included letters, subsequent reminders and summons as well. The appellant however did not co-operate with the department at any point of time. It was only after the Departmental letter dated 12.03.2018 was issued for recovery of dues, which was also delivered to the same registered address, the appellant made some attempt to communicate with the department at last to avoid the recoveries proposed to be made by the department."

4.2 He further submits that the department has not been able to bring on record any evidence of proof of delivery and the department has only claimed to have dispatched the impugned order at the registered office and by putting on Notice Board. Learned counsel further submits that the provisions of Section 37C of the Central Excise Act, 1944 specifically provides that in terms of Sub-Section

(a) of the Section 37(1), the impugned orders were required to be served by way of registered post with acknowledgement or by speed post with proof of delivery or by courier approved by the CBEC. He further submits that the report of jurisdictional Range Officer nowhere states or specifies as to by which of the three modes, the impugned orders were served upon the appellant and further, no acknowledgement in lieu of service of the impugned orders has been produced or relied upon by the Range Officer. The learned Counsel further submits that onus is upon the Department to establish service of impugned orders upon the appellant, which has not been discharged in the present case. In support of his submissions, the learned counsel has relied upon the following decisions:

- ***Vijay Pratap Vs. Commissioner of Central Excise & Service Tax, Raipur reported in 2025 (29) Centax 339 (Chhattisgarh).***
- ***Kalp Corporation Vs. Union of India reported in 2024 (18) Centax 447(Guj.)***
- ***Commissioner,CGST and CX Haldia Commissionerate Vs. Haldia Petrochemicals Ltd. reported in 2023 (2) Centax 199(Cal.)***
- ***Seven Seas Royal Marine Service Pvt. Ltd. Vs. Commissioner of CGST & Central Excise-Jodhpur-I reported in 2024(24) Centax 341 (Tri.-Del.)***

4.3 He further submits that in all the decisions cited (Supra), the service of impugned orders were not established and completed by merely making dispatch thereof or by displaying on the notice board,

unless acknowledgement in lieu of service is demonstrated by the department. He further submits that in view of law laid down by the various decisions of the Tribunal, the impugned order needs to be set aside and the matter is required to be remanded to the Original authority because the original authority did not comply with the principle of natural justice in passing the Order-in-Original. He further submits that the original authority has not considered the reply furnished by the appellant and has not accorded the personal hearing and the orders passed by the original authority are ex-parte. Learned counsel also submits that the actual service tax liability of the appellant in respect of all the three Orders-in-Original comes to Rs. 3,14,792 has computed below :

Period	Gross Amount incurred on GTA	Less value where freight was less than Rs. 750/- per trip	Net Taxable value after abatement @ 75%	Service payable`	Tax	Service Tax Paid	Payment particular
2010-11	2431168	0	607792	62603	(@ 10.30%)	161020	Challan No. 0005 dated 10.10.2011
2011-12	648304	0	162076	16694	(@ 10.30%)	12,860/-	And Challan No. 0022 dated 30.03.2012
2012-13	1270057.90	109879.94	290045	35840	(@ 12.36%)		
2013-14	1296420.61	84141.21	293072	36224	(@ 12.36%)	36224	PLA Entry No. 2 dated 05.05.2015
2014-15	5368264.22	0	1321429	163431	(@ 12.36%)	163431	PLA Entry No. 3 dated 08.05.2015
Total				314792		373535	

4.4 Learned counsel further submits that above cited table clearly shows that the appellant had already made excess payment in comparison to its service tax liability and hence the interest liability, if any ought to have been made and appropriated by the original authority therefrom. But, the original authority not only confirmed the demand of service tax with interest but also imposed penalties under Section 76,78, & 77 of the Finance Act, 1994.

5. On the other hand, the learned AR has also placed on record the comments received from the field formation regarding the service of Order-in-Original and as per the report furnished by the field formation they have said that the impugned order duly dispatched to the registered address available at the relevant time as per the provisions of the Central Excise Act, 1944. Furthermore, the orders were also displayed on the Notice Board in terms of Section 37C of the Central Excise Act, 1944, which is also evident from the Range Officer's letter dated 04.09.2018.

6. We have considered the submissions made by both the parties and perused the material on record, we find that the orders were passed by the Assistant Commissioner ex-parte without taking the reply of the appellant on record. We also find that the department has not been able to establish the actual delivery of the Order-in-

Original. In fact, the appellant came to know about the Order-in-Original only when he got a letter dated 12.03.2018 issued by the jurisdictional Range Superintendent directing the appellant to deposit the government dues and thereafter, the appellant requested the superintendent to provide certified copy of Order-in-Original and finally vide letter dated 13.06.2018 jurisdictional Assistant Commissioner provided the copies of the Order-in-Original; thereafter the appellant could file the present appeals.

7. Further, we find that as per the provisions of Section 37C of the Central Excise Act, 1944, the impugned orders are required to be served by way of registered post with acknowledgement or by speed post with proof of delivery or by courier approved by the CBEC. We also find that in the present case no acknowledgement in lieu of service of the impugned orders has been produced or relied upon by the Range Officer. We also find that onus is always on the Department to establish service of impugned orders upon the appellant, which has not been discharged in the present case. Further, in view of the various decisions cited (Supra), relied upon by the appellant, it has been consistently held that the provisions of Section 37(c) are to be complied with mandatorily.

8. In this regard, we may refer to the decision in the case of ***M/s Kalp Corporation Vs. Union of India reported in 2024 (18) Centax 447(Guj.)***, wherein, it was held as under:

Excise: Mandatory provisions of Section 37C of Central Excise Act, 1944 not being complied with after de-novo

proceedings and ex-parte order passed by adjudicating authority, Principles of natural justice are violated.

Excise: Assessee suffered gross injustice, Additional Commissioner having acted without jurisdiction and order passed in breach of principles of natural justice -Reasons assigned by assessee for not filing appeal within stipulated period of limitation are justified - Thus, writ jurisdiction can be exercised to condone the delay, Matter remanded.

Show cause notice Service of Notice not sought to be served on noticee-assessee following procedure mentioned in Section 37C of Central Excise Act, 1944 firstly by tendering at assessee's premises or ending by registered AD Post, or Speed Post or affixing notice at any conspicuous part of factory or office of residential premises, of assessee - Thus, mandatory provisions of Section 37C ibid not complied with after de-novo proceedings and ex-parte order passed by adjudicating authority - Principles of natural justice violated - Section 37C of Central Excise Act, 1944. [paras 9, 11 and 14]

Appeal to Commissioner (Appeals) Limitation Condonation of delay Writ jurisdiction - Assessee having two factories in Mehsana District, one at Dediyan and other at Nagalpur - Administration office is at Nagalpur, from where accounting work as well as work of administration, which includes placing of order of inputs etc. is being carried out - Cenvat credit availed on strength of input invoices addressed in

name of Nagalpur Unit of assessee who had surrendered its Central Excise Registration on 17.11.2008-Payment of said invoices also made by Nagalpur Unit -However, duty paid inputs received received in Dediyanan Unit even if address in invoices having address of Nagalpur Unit, being the administrative office - Ex-parte order passed by adjudicating authority on remanded case Assessee suffered gross injustice, Additional Commissioner having acted without jurisdiction and order passed in breach of principles of natural justice - Reasons assigned by assessee for not filing appeal within stipulated period of limitation are justified Thus, writ jurisdiction can be exercised to condone the delay Section 35 of Central Excise Act, 1944-Article 226 of Constitution of India. [paras 16, 17 and 18]

9. In view of our discussions above and considering the facts that the Original authority has passed the Order-in-Original Ex-parte without compliance with the principle of natural justice, therefore, we think it appropriate to set aside the impugned order and remand the matter back to the Original authority to decide afresh the cases of the appellant after complying with the principle of natural justice and after giving adequate opportunity of personal hearing to the

appellant and thereafter pass the order in accordance with law and the same is to be done within the period of two months from the receipt of the certified copy of this order.

10. Consequently, all the three appeals are disposed of by way of remand on the above terms.

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

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)