

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

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 61134 of 2025

[Arising out of Order-in-Appeal No.LUD-EXCUS-001-APP-232-2025 dated 22.08.2025 passed by the Commissioner (Appeals), CGST, Ludhiana]

M/s Subhash Chander

Adda Jhugia, VPO Binewal, Garhshankar,
Hoshiarpur, Punjab 144523

.....Appellant

VERSUS

**Commissioner of Central Excise, Goods
and Service Tax, Jalandhar**

GST Bhawan, C.R. Building, Model Town Road,
Jalandhar, Punjab 144001

.....Respondent

APPEARANCE:

Shri Joy Kumar, Advocate for the Appellant

Shri Ram Niwas, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NO. 61788/2025

DATE OF HEARING: 19.12.2025

DATE OF DECISION: 19.12.2025

The present appeal is directed against the impugned order dated 22.08.2025 passed by the Commissioner (Appeals), CGST Ludhiana, whereby the learned Commissioner (Appeals) has dismissed the appeal of the appellant being non maintainable on the ground of limitation, being time bar.

2. Briefly the facts of the present case are that basis on the information received in the form of third-party data for the financial year 2014-15, it was observed that the appellant was not paying service tax on the gross receipts of services declared in the income tax returns; thereafter, an enquiry was initiated and the appellant was asked to provide the relevant financial documents/records viz. copies of income tax returns, balance sheet along with profit and loss account, Form 26 AS etc for the financial year 2014-15. Thereafter, the service tax liability of the appellant was calculated on the basis of available third-party data and by applying best judgement method under section 72 of the Act; further it was found that the appellant had not paid service tax during the relevant period; thereafter, a show cause notice dated 22.11.2020 proposing recovery of Rs. 23,36,853/- under section 73 of the Act along with interest under section 75 of the Act and penalties under Sections 77 & 78 of the Act was issued to the appellant. As per the Department, the appellant did not file the reply to the show cause notice nor appeared for personal hearing on the given date; thereafter, the adjudicating authority on the basis of the documents available in the record, vide the Order-in-Original dated 25.01.2023, confirmed the demand in *toto*. Aggrieved by the said order, the appellant filed the appeal before the Commissioner (Appeals) on 21.03.2025, who vide the impugned Order-in-Appeal dated 22.08.2025, has rejected the appeal of the Appellant on the ground of limitation. Hence, the present appeal.

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

4. The learned Counsel for the appellant submits that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts.

4.1 He further submits that the Order-in-Original dated 25.01.2023 was not received by the appellant; the appellant requested the Assistant Commissioner vide letter dated 18.03.2025 to supply the signed copy of the Order-in-Original dated 25.01.2023 but the appellant did not receive the reply of their letter dated 18.03.2025 from the adjudicating authority and thereafter, the appellant again made a request vide letter dated 03.09.2025 for supply the signed copy of the Order-in-Original dated 25.01.2023. After getting the signed copy of the Order-in-Original, the appellant filed the appeal before the Commissioner (Appeals), who rejected their appeal being time bar.

4.2 Learned Counsel further submits that the Department has not able to bring on record any evidence regarding the actual delivery of the Order-in-Original dated 25.01.2023. He further submits that the Department has only brought evidence to the fact that the Order-In-Original was dispatched to the appellant and the same was not returned unserved and therefore it was deemed to be served. The learned Counsel further submits that it has been held in various decisions of the Courts that mere dispatch of order cannot be considered as service. In support of his submissions, he relies upon the following decisions:

- M/s Kumar Electronics Vs. Commissioner of Central Excise & Service Tax, Madurai [Final Order No. 40084/2020 dated 06.02.2020]
- AL Sadik Haj Tour Organizers Vs. Commr. Of Cus. CGST & C.Ex., Jabalpur [2022 (64) GSTL 187].

Learned Counsel also relies upon the decision of this Tribunal in the case of M/s NIICT Vs. Commissioner of Central Goods & Service Tax, Chandigarh [Final Order No. 61445/2025 dated 26.09.2025], wherein this Tribunal under identical facts, has set aside the Commissioner (Appeals)'s order on the ground that the Order-in-Original was not actually served on the assessee and has remanded the matter back to the Commissioner (Appeals) to decide the same on merits after affording an opportunity of the personal hearing.

5. On the other hand, learned Authorized Repetitive for the department, reiterates the findings of the impugned order and submits that the Order-in-Original was dispatched to the appellant and the same did not come back as unserved. He further submits that the appellant did not co-operate with the Department and did not provide data of the records requisitioned by the Department and therefore the department had to pass the Order-in-Original on the basis of the available records and the third party data.

6. I have considered the submissions made by both the parties and perused the material on record. I find that in the present case, the show cause notice dated 22.11.2020 was issued on the basis of third-party data namely income tax return and form 26 AS. Further, I find that Order-in-Original dated 25.01.2023 was passed *ex-parte* order on the basis of records available and being aggrieved by the

said Order-in-Original, the appellant filed the appeal before the Commissioner (Appeals) on the basis of the uncertified copy of the Order-in-Original and the Ld. Commissioner (Appeals) has observed in the impugned order that the said Order-in-Original was delivered to the appellant on 02.02.2023 whereas the appellant filed the appeal before the Commissioner (Appeals) on 21.03.2025 i.e. beyond due date and accordingly, rejected the appeal of the appellant. Further, I find that in fact, the appellant has received the said Order-in-Original on 06.03.2025 and thereafter, he filed the appeal on **21.03.2025** which is within the period of limitation as prescribed by law.

7. In view of this, I set aside the impugned order and remand the matter back to the Commissioner (Appeals) with a direction to decide the issue on merit after considering the material placed on record by the appellant and after affording an opportunity of hearing to the appellant and thereafter, pass a reasoned order in accordance with law within the period of two months from the date of receipt of the certified copy of this order.

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

(S. S. GARG)
MEMBER (JUDICIAL)