CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

DIVISION BENCH
COURT NO. I

APPEAL NO. E/61311/2018-EX[DB]

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-103-18-19 dated 31.05.2018 passed by the Commissioner of CGST (Appeals), Chandigarh]

Om Sai Industries : **Appellant(s)**

VS

C.C.E., Shimla : **Respondent(s)**

Appearance:
Present for the Appellant(s): Mr. R.K. Hasija, Advocate
Present for the Respondent(s): Mr. Tarun Kumar, A.R.

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Bijay Kumar, Member (Technical)

Date of hearing/decision: 20.02.2019

FINAL ORDER NO. 60151/2019

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the appeal has dismissed as time barred by the Ld. Commissioner (Appeals).

2. The facts of the case are that the adjudication order dt. 23.09.2010 was shown dispatched by the department and entry thereof was entered at Sl. No. 13913 of Dispatch Register but nowhere it is mentioned in the impugned order when the impugned order was sent to the appellant through speed post. Moreover, the speed post is no proper mode of dispatch of the impugned order

during the relevant period, but the Ld. Commissioner (Appeals) dismissed the appeal as time barred as the same has been filed by the appellant on 24.08.2015 before the Ld. Commissioner (Appeals) against the order dt. 23.09.2010.

3. Heard the parties.

4. Considering the fact that the date of dispatch of the impugned order is not known, moreover, the impugned order has been sent by speed to the appellant which is not a proper mode for dispatch of the order. In these circumstances, the Revenue failed to discharge their burden of delivery of the impugned order on the appellant. Therefore, the benefit of doubt goes in the favour of the appellant. Accordingly, we hold that the appellant has filed the appeal within time before the Ld. Commissioner (Appeals). In these circumstances, we set aside the impugned order passed by the Ld. Commissioner (Appeals) and remand the matter back to the Ld. Commissioner (Appeals) to decide the issue on merits after taking contention of the appellant and thereafter to pass an order in accordance with law.

(Dictated and pronounced in the open court)

(Bijay Kumar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

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