IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. ST/40540/2018

(Arising out of Order-in-Appeal No. 7/2016 (CXA-II) dated 12.1.2016 passed by the Commissioner of Central Excise (Appeals – II), Chennai)

M/s. National Oxygen Ltd. Appellant

Vs.

Commissioner of GST & Central Excise
Puducherry Respondent

Appearance

Ms. Sindhuja, Advocate for the Appellant
Shri B. Balamurugan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **10.07.2018**

Final Order No. **41970 / 2018**

Brief facts are that the appellants were issued show cause notice for short-payment of service tax and after due process of law, the original authority vide order dated 25.3.2015 confirmed the demand, interest and penalties. The appellant thereafter filed appeal before Commissioner (Appeals) on 12.10.2105 which was dismissed on the ground of being time-bar. Hence this appeal.

2. On behalf of the appellant, ld. counsel Ms. Sindhuja submitted that the appellant had not received the copy of the order. In fact, they filed a letter to the O/o Assistant Commissioner dated 20.9.2015 enquiring about the non-receipt of the copy of the Order-in-Original and thereafter a photocopy of the said Order-in-Original was served upon on 28.9.2015. The appellant thus filed appeal on 12.10.2015 well within the time. That therefore the Commissioner (Appeals) ought not to have rejected the appeal on the ground of limitation.

3. The ld. AR Shri B. Balamurugan supported the findings in the impugned order. He furnished a copy of the letter by the concerned Commissionerate stating that Order-in-Original dated 25.3.2015 was dispatched by registered post to the appellant on9.4.2015. The acknowledgment also shows that the appellant has received the same. However, the appellant has filed the appeal with much delay of more than six months only on 12.10.2015. That the Commissioner (Appeals) has rightly rejected the appeal as being time-barred. He relied upon the judgment of the Hon'ble Supreme Court in the case of Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur – 2008 (221) ELT 163 (SC).

4. Heard both sides.

5. The grievance of the appellant is that the appeal has been dismissed on the ground of being time-barred. The Order-in-

Original dated 25.3.2015. As per the time prescribed under the statute, the appeal ought to have been filed within two months from the date of receipt of such receipt of the order. The Commissioner (Appeals) has powers to condone the delay to an extent of one month. Thus, in any event, the appeal ought to have been filed within three months from the date of receipt of copy of the order. The appellant contended that they have not received the copy of the order. However, the department has furnished documents showing that the copy of the order has been dispatched by registered post on 9.4.2015. The acknowledgment is also furnished by them which shows the signature and stamp of the appellant. However, no date is endorsed by the appellant while receiving the copy of the order. In any case, when the order has been dispatched on 9.4.2015, the same ought to have been delivered to the assessee at Thiruvander Koil, Puducherry. It would take only a maximum of ten days. The O/o Assistant Commissioner as well as the address of the assessee is within Puducherry limits. Thus, it is seen that the contention of the appellant that they have not received the copy of the order and that they applied to the Assistant Commissioner on 28.9.2015 is not supported by any probable evidence. I am of the view the Commissioner (Appeals) has rightly rejected the appeal on the ground of limitation. The decision rendered by the Hon’ble Supreme Court in the case of Singh Enterprises (supra) settles the law that Commissioner (Appeals) has no power to condone delay beyond a period of one month. The impugned order does not call for any interference. The appeal is dismissed.

(Dictated and pronounced in open court)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex