CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. I

Excise Tax Appeal No. 41356 of 2017

(Arising out of Order-in-Appeal No. 34/2017 dated 15.03.2017 passed by the Commissioner of Central Excise & Service Tax (Appeals), Chennai)

M/s. Rane (Madras) Ltd. **...Appellant**
No.154, Velachery Main road,
Velacherry,
Chennai-600 042.

Versus

Commissioner of GST and Central Excise **..Respondent**
Chennai South Commissionerate
MHU Complex, No.692, Anna Salai,
Nandanam, Chennai-600 035.

APPEARANCE:

Shri M. Karthikeyan, Advocate for the Appellant
Ms. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER No.40536/2025

DATE OF HEARING: 02.04.2025
DATE OF DECISION:27.05.2025

Per Mr. Ajayan T.V.

M/s. Rane (Madras) Ltd., the appellant herein have called into question the Order-in-Appeal No.34/2017 dated 15.03.2017 wherein the appeal preferred against the Order-in-Original No.LTUC/309/2015-ADC dated 21.07.2015 has been rejected as time bar for having been filed beyond statutory time limit of 60 days and also beyond the condonable period of further 30 days provided under Section 35 of the Central Excise Act, 1944 without going into the merits of the case.

2. Briefly stated the facts are that the appellant is a manufacturer of motor vehicle parts classifiable under chapter 8707 of the Central Excise Tariff Act, 1985 and avails Cenvat credit of duty paid on inputs and capital goods and Service Tax paid on input services under Central Excise Rule, 2004. The appellant also purchases some of the motor vehicle parts from M/s. Rane NSK Ltd. Guduvanchery and are exporting the same to the foreign customers. During the course of verification of the books of accounts and central excise records of the appellant by the Internal Audit Officers of LTU Chennai, it was noticed that the appellant had availed Cenvat credit of the Service Tax paid on services like Goods transport operator, Manpower supply, Custom House Agent, Commission to Foreign Agents, Bank Charges, Warehouse charges & segregation charges which are used commonly for manufacture as well as trading of goods cleared for export. The department being of the view that trading is a exempted service, and since the appellant had used the service above mentioned for exempted service, namely trading of goods cleared for export, as well as in manufacture and clearance of dutiable goods without maintaining separated accounts for the input services used in providing exempted services, the appellant was required to pay the amount equal to 6% of the value of exempted services as required under Rule

6(3)(i) of the Cenvat credit Rules, 2004. Accordingly, the Show Cause Notice No.LTUC/384/2012-(ADC) dated 31.10.2012 demanding Rs.24,07,942/- being the amount payable under Rule 6(3)(i) of CCR, 2004 was issued. After due process of law the demand was confirmed *vide* Order-in-Original No. LTUC/86/2013-ADC dated 29.03.2013 along with interest as per Rule 14 of Cenvat credit Rule, 2004 read with Section 11AA/11AB of the Central Excise Act, 1944 and equal penalty imposed in terms of Rules 15(2) of the CCR, 2004 read with Section 11AC of the Act. Aggrieved by the said order the appellant preferred an appeal before Commissioner (Appeals), LTU, Chennai-II. The appellate authority, *vide* Order-in-Appeal No.97/2014 dated 01.07.2014, having found that the appellant was not heard in person, without going into merits, remanded the matter to the Lower Adjudicating Authority to adjudicate afresh, giving adequate opportunity to the appellant to be heard in person.

3. Consequent to such order of remand, the Adjudicating Authority after due process of law in the *denovo* adjudication proceedings, passed Order-in-Original No. LTUC/309/2015-ADC dated 21.07.2015 confirming the demands as was held in the previous order dated 29.03.2013 ibid. Aggrieved, the appellant thereafter preferred an appeal before the Commissioner (Appeals), LTU Chennai. However, *vide* the impugned Order-in-Appeal No.34/2017 the appeal was dismissed as time barred without going into merits, as above mentioned. Hence this appeal.

4. Shri M. Karthikeyan, Advocate appeared and argued for the appellant. It is his submission that the appellant had come to know about the Order-in-Original No. LTUC/309/2015 dated 21.07.2015 only when their rebate claims came into sanctioned *vide* Order-in-Original No.178 & 189 of 2016, in which, the rebate claim sanctioned was after adjusting towards the demands confirmed in the Order-in-Appeal dated 21.07.2015. Immediately the appellants had returned to the department repeatedly seeking a copy of the said Order-in-Original so that they can challenge the same. It was only on 04.04.2016, the department sent a letter to the appellant's stating that the disputed OIO No. 309/2015 IBID was dispatched to the appellant on 23.07.2015. The appellant again wrote twice stating that they have not received the said order at all and requesting for a copy of the same. After frequent attempts, the appellant received a copy of the order only on 18.05.2016 and within a month, on 15.06.2016 the appellant had preferred an appeal before the Commissioner (Appeals). The Ld. Counsel submits that the Appellate Authority has erred in dismissing their appeal as time bar by mere observation that from a copy of the impugned order, it is clear that the same has been dispatched on 23.07.2015, and this been so, the claim of the appellant that the date of receipt of the impugned order is 18.05.2016, is a misstated claim and therefore lacks merit. He further submits that the Appellate Authority has thus erred in finding that the appeal has been delayed by nearly 9 months, much beyond the statutory time limit prescribed by the statute. The Ld. Counsel

submits that the Appellate Authority has merely dismissed the appeal without relying on any proof that the said order has been received by the appellant. It is his submission that Section 37C(1) of the Central Excise Act, 1944 mandates the requirement of proof of service. He further submits that even on merits the appellant's had a good case as there are very many decisions in their favour and that in the appellant's own case pertaining to the subsequent period from September 2014 to June 2015, the Lower Appellate Authority himself had accepted that demands against the appellant are not sustainable on the above said account and had passed an Order-in-Appeal No.73/2017 dated 29.05.2017 allowing the appeal. The Ld. Counsel submits that since merits are also in appellant's favour, the rejection of the appeal on the ground of time bar by the Lower Appellate Authority is unjust, and therefore prayed that the matter may be remanded to the Lower Appellate Authority with directions to entertain the appeal and pass the order on merits. He relies on the decision in ***M/s. Vijay Pratap vs. CCE & ST, Chhattisgarh, 2025 (3) TMI 963-Chattisgarh High Court***.

5. Ms. Anandalakshmi Ganeshram, Ld. AR appeared for the respondent and reiterated the grounds of appeal. She urged that the dismissal was correct and proper and relied on the decisions in ***Fil Industries Ltd. vs. CCE, Jammu, 2008 (227) ELT 490 (Tri.-Del.)*** and ***Laxmi Electronic Moulds &***

Precision Engineering Pvt Ltd v. UOI, 2022 (380) ELT 541 (Kar).

6. Heard both sides, perused the appeal records and the decisions submitted as relied upon.

7. The only issue that arises for determination is whether the dismissal of the appeal preferred by the Appellant as an appeal filed beyond the statutory time limit prescribed in statute is tenable.

8. Indisputably, the fact is that the appeal has been dismissed by the Commissioner Appeals on a finding that " on the other hand, from the copy of the impugned order it is clear that the same has been dispatched on 23.07.2015. This being so, the claim of the Appellant that the date of receipt of the impugned order is 18.05.2016 is a misstated claim and therefore lacks merit."

9. We find that the very same issue had come up for consideration by the Hon'ble Chhatisgarh High Court in a tax appeal in the case ***M/s. Vijay Pratap vs. CCE & ST, Chhattisgarh, 2025 (3) TMI 963-Chattisgarh High Court***, where after framing a substantial question of law as ""*Whether the Customs, Excise & Service Tax Appellate Tribunal is justified in dismissing the appeal preferred by the appellant and affirming the order of Commissioner of Central Excise (Appeals) by holding that Commissioner of Central Excise (Appeals) has rightly dismissed the appeal of the appellant being barred by limitation, by*

recording a finding which is perverse to the record?" , the Judgement was rendered. The relevant portions are as under:

"14. Coming to the facts of the case in light of the provisions contained in Section 35 (1) of the Central Excise Act and the decisions rendered by their Lordships of the Supreme Court in that regard, it is quite vivid that Section 35 (1) mandates that the purpose of communication of order by the Central Excise Officer is for the purpose of enabling the person aggrieved to file appeal before the Commissioner (Appeals) challenging the order so communicated and that period is also specifically provided to be 60 days from the date of communication of such decision to him by the Central Excise Officer, in this case, the Assistant Commissioner of Central Excise and furthermore, power to condone the delay in filing the appeal has been restricted to the Commissioner (Appeals) by allowing the appeal to be filed within a further period of 30 days in addition to 60 days as specified in the proviso appended to Section 35 (1). Therefore, considering the period of limitation to file appeal as 60 + 30 = 90 days, appeal can be preferred within 60 days from the date of communication of the decision or order. ***Therefore, the order has to be communicated and the person aggrieved must be communicated with the decision or order. In other words, the party affected by the order or decision must know it, actually or constructively, and the period of 60 days would start running from the date of communication****.*

15. Section 37C of the Central Excise Act provides the manner of service of decisions, orders, summons, etc., which states as under:-

"37C. Service of decisions, orders, summons, etc.—(*1) Any decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be served, —*

(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), to the person for whom it is intended or his authorised agent, if any;

(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof, to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder,

***shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post or courier referred to in sub-section (1) or a copy thereof is affixed in the manner provided in sub-section (1)**."*

16. A careful perusal of Section 37C (1) of the Central Excise Act would show that any decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be served, also by speed post with proof of delivery to the person for whom it is intended or his authorised agent, if any; if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof, to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended; and if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice. ***Sub-section (2) of Section 37C provides that every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post.***

17. In this regard, the decision of the Supreme Court in Saral Wire Craft Private Limited (supra) may be noticed herein in which their Lordships of the Supreme Court while considering the provisions contained in Section 37C of the Central Excise Act held that every effort must be taken to meaningfully and realistically serve the affected party so as not merely to ensure that he has knowledge thereof but also to enable him to initiate any permissible action. It has been observed by their Lordships as under:-

> *"7. It is an anathema in law to decide a matter without due notice to the party concerned. Every effort must be taken to meaningfully and realistically serve the affected party so as not merely to ensure that he has knowledge thereof but also to enable him to initiate any permissible action. …*
>
> *9. It is in these circumstances that we are of the clear conclusion that a miscarriage of justice has taken place, in that the authorities/courts below have failed to notice the specific language of Section 37-C (1) (a) of the Act which requires that an order must be tendered on the person concerned or his authorised agent, in other words, on no other person, to ensure efficaciousness. We must immediately recall the decision in* ***Taylor v. Taylor (1875) LR 1 Ch D 426*** *rendered venerable by virtue of its jural acceptance and applicable for over a century. It was approved by the* ***Privy Council in Nazir Ahmad v. King Emperor 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372 : (1936) 44 LW 583*** *and was subsequently applied in* ***Rao Shiv Bahadur Singh v. State of Vindhya Pradesh AIR 1954 SC 322 : 1954 Cri LJ 910, State of U.P. v. Singhara Singh AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2), Babu Verghese v. Bar Council of Kerala (1999) 3 SCC 422*** *and more recently in* ***Hussein Ghadially v. State of Gujarat (2014) 8 SCC 425 : (2014) 6 SCC (Cri) 26.*** *As observed by this Court in Babu Verghese (supra): (SCC p. 432, para 31)*

> *"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all."*

18. Reverting finally to the facts of the case in light of the provisions contained in Section 37C of the Central Excise Act, which provides the manner of serving the copy of decision or order, it is quite vivid that the purpose of communicating the order to the person aggrieved, in this case, the appellant herein / assessee, is for the purpose of enabling him to prefer an appeal against the adjudicating order before the Commissioner (Appeals), as only 60 days time has been provided from the date of communication to prefer appeal and the Commissioner (Appeals) is empowered only to condone the delay of further 30 days and thereby, after 90 days from the date of communication, no further jurisdiction has been conferred to the Commissioner (Appeals) to condone the delay. There is complete exclusion of Section 5 of the Limitation Act as held by the Supreme Court in Singh Enterprises (supra). Therefore, the Assistant Commissioner of Central Excise was obliged to strictly comply the provisions contained in Section 35 (1) read with Section 37C (1) (a) of the Central Excise Act and communicate the order to the person aggrieved, which, in the present case, is said to have been communicated to the appellant herein/assessee by speed post by dispatch/consignment No. EC080953003IN, but according to the document filed before this Court, the consignment is said to have been dispatched vide Speed Post/Consignment No. EC080953003IN on 15-12-2017, however, there is no proof of delivery in that regard, as record showing communication has been directed to be produced before this Court by order dated 14-2-2025. Even the communication dated 13-12-2018 between the Superintendent (Appeals), CGST & Central Excise, Raipur and the Assistant Commissioner, CGST & Central Excise, Division Korba, which is the document filed by the appellant/assessee before this Court on 18-2-2025, would show that the consignment details are not found and is missing. ***As such, there is no evidence on record to demonstrate the proof of delivery of the subject consignment that the appellant was communicated with the adjudication order passed by the Assistant Commissioner of Central Excise as required under Section 35 (1) read with Section 37C (1) (a) of the Central Excise Act which mandates that the order has to be served by speed post with proof of delivery.*** *Therefore, as per showing of the appellant, once he is communicated with the copy of adjudication order by e-mail on 27-7-2018, he would be justified in preferring appeal on 25-9-2018 before the Commissioner (Appeals), which is within the period of limitation of 60 days from the date of communication of the order, as the appellant was actually communicated with the order on 27-7-2018. As such, the Commissioner (Appeals) has committed grave legal error in holding the appeal to be barred by limitation and that it has been filed beyond the period of 60 days from the date of communication of the order. The CESTAT has also committed legal error in perpetuating the illegality committed by the Commissioner (Appeals) by dismissing the appeal holding it to be barred by limitation by affirming the order passed by the Commissioner (Appeals).*

19. Consequently, the appeal is allowed and orders passed by the Commissioner (Appeals) affirmed by the CESTAT are hereby set *aside. Conclusively, the substantial question of law is answered in favour of the assessee and against the Revenue. The matter is remitted to the Commissioner (Appeals) for adjudicating the appeal on its own merit in accordance with law, expeditiously, as the appeal is old one and required to be decided expeditiously. No cost(s).”* ***(emphasis supplied)***

10. We have also examined the decisions cited by the Ld. Authorised Representative. In the case of FIL Industries Ltd cited, the facts show that the order of the Commissioner therein reflected that the postal authorities had intimated the department that the registered letter through which the copy of the order in original was sent was delivered to the assessee on 04-07-2006. In the case of Laxmi Electronics Moulds cited, the High Court has noted that it is obvious that the post master general while giving the report had referred to the query made by the petition as regarding the acknowledgement card under reference as to whether the letter has been delivered.

11. We find from the facts of the appeal at hand, the appellate authority in his findings reproduced supra that from the copy of the impugned order it is clear that the same has been dispatched on 23.07.2015, has thus merely relied on the date of despatch and as such, there is no evidence on record to demonstrate the proof of delivery of the subject order and that the appellant was communicated with the adjudication order passed.

12. In such circumstances, following the decision in the case ***M/s. Vijay Pratap vs. CCE & ST, Chhattisgarh, 2025 (3) TMI 963-Chattisgarh High Court***, we hold that the impugned

OIA is unsustainable. The OIA is hereby set aside and the matter is remitted to the Commissioner (Appeals) for adjudicating the appeal on its merits in accordance with law and adhering to the principles of natural justice. Since the dispute is more than a decade old, we direct the appellate authority to decide the matter within two months of receipt of a copy of this Order.

The appeal is allowed by way of remand on the above terms.

(Order pronounced in open court on 27.05.2025)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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