CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Service Tax Appeal No. 42001 of 2015

(Arising out of Order-in-Appeal No.99/2015-ST dated 25.06.2015 passed by Commissioner of Central Excise (Appeal-I Coimbatore) Circuit Office @ Salem Commissionerate, No.1, Foulks Compound, Anai Road, Salem 636 001)

The Executive Officer .... **Appellant**
Tharamangalam Selection Grade Town Panchayat,
Tharamangalam,
Salem District.

VERSUS

The Commissioner of GST &
Central Excise, ... **Respondent**
Salem Commissionerate,
No.1, Foulks Compound, Anai Road,
Salem 636 001.

APPEARANCE :

Shri R. Balagopal, Consultant for the Appellant
Shri N. Satyanarayana, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40666/2025

DATE OF HEARING : 18.06.2025
DATE OF DECISION : 27.06.2025

Per: Shri P. Dinesha

This appeal is filed against the Order-in-Appeal dated 25.06.2015 passed by Commissioner (Appeals), Salem; the First Appellate Authority has rejected the appeal filed by the Assessee-Appellant as barred by limitation as, according to him, the appeal was filed beyond 60 + 30 days of condonable period.

2. Heard Shri R. Balagopal, Ld. Consultant for the Appellant and Shri N. Satyanarayana, Ld. Assistant Commissioner for the Respondent. Upon hearing both sides, the only issue to be decided is, "whether the impugned order is sustainable in law ?"

3. From the rival contentions and upon perusal of documents available on record, the Order-in-Original No.32/2014 was passed on 09.09.2014, instead of filing the statutory Appeal, it appears that the Appellant filed a Rectification Application under Section 74 of the Finance Act, 1994, admittedly after the expiry of statutory period of limitation provided under the statute. But the statute provides 2 years for filing Rectification Application and hence, the Appellant contends that their Rectification Application is as per law and also within the statutory period

of limitation. It is contended that upon receiving the Review/Rectification Order dt. 24.01.2015, the appellant filed statutory appeal before First Appellate Authority on 05.03.2015 within 60 days and hence, their appeal is filed in time.

4. *Per contra*, Ld. D.R supported the impugned order.

5. The above facts are not in dispute. The Appellant had filed a Rectification Application on a certain ground apprehending double taxation but the Adjudicating Authority rejected the same on the ground that the Order-in-Original is very much a speaking order. When the date of Rectification Application is rejected in the above manner, the date of communication becomes relevant. Hence, it was incumbent upon the Commissioner (Appeals) to verify about the genuineness of the above claim of the Appellant and if the Rectification Application is not in order and so is the order, only then could he reject the Appeal as barred by limitation.

6. In that view of the matter, we do not approve the rejection of the appeal by the First Appellate Authority. Accordingly, we set aside the same as the First appeal filed from the date of Review Order is in time. Further, we deem

it appropriate to direct the First Appellate Authority to verify and pass appropriate order, on merits. We clarify that the first Appeal could be disposed on merits only on those issues on which Rectification/Review was sought and hence, the Appellant cannot be permitted to agitate on the issues that were considered in the OIO but no Rectification/Review was sought. It goes without saying that the First Appellate Authority shall afford reasonable opportunities to the Appellant and follow the principles of natural justice while disposing of the Appeal. Considering the fact that it is a very old, the Commissioner may dispose of the Appeal within a period of 90 days from the date of receipt of this order. Appellant shall cooperate with the Appellate Authority without seeking unnecessary adjournments. The contentions of the appellant as agitated in its rectification application are left open. The appeal is disposed of on the above terms.

(Order pronounced in open court on 27.06.2025)

(VASA SESHAGIRI RAO)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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