

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 52271 of 2019-SM

(Arising out of order-in-appeal No. 527(CRM) CE/JDR/2019 dated 07.06.2019 passed by the Commissioner (Appeals) Central Excise & Central Goods and Service Tax, Jodhpur).

M/s Unnati Alloys Pvt. Limited

205, Ajeet Bhawan
2697/6, Ansari Road, Daryaganj
Delhi-110002.

Appellant

VERSUS

**Commissioner, Central Goods and
Service Tax,**

142-B, Sector-11, Hiran Magri, Udaipur
Rajasthan-313002.

Respondent

APPEARANCE:

Ms. Ekta Kapoor, Advocate for the appellant
Shri Pradee Gupta, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 51588/2021

DATE OF HEARING/DECISION: 14.06.2021

ANIL CHOUDHARY:

Heard the parties.

2. Learned Counsel appearing for the appellant states that the impugned order has been practically passed ex-parte as the notice of personal hearing was not served upon them. Show cause notice was issued to the Jaipur address of the appellant company, and it was received by one person who was present at the address. However, the appellant states that they have vacated the Jaipur office sometime in

the year 2014 and moved to their present address at Ansari Road, Darya Ganj, New Delhi-110002. The appellant had not filed any reply to the show cause notice. As the arrangement for receiving the notice at the old Jaipur address no longer existed, they could not get the notice for personal hearing. It is admitted that the order-in-original dated 29.12.2017 was despatched to their Jaipur address which could not be delivered, and returned to the Department with the remark by the Post Office 'premises vacated four years back'.

3. Thereafter, the appellant come to know about passing of the order-in-original from other co-noticees sometime in June, 2018 and thereafter they applied for a copy of the order before the Assistant Commissioner and the same was issued to them vide forwarding letter dated 05.07.2018. Admittedly, appellant filed their appeal before the Commissioner (Appeals) on 24.07.2018. However, the Commissioner (Appeals) ignoring the fact on record that the order-in-original was returned back undelivered with the remark 'premises vacated' have erroneously presumed service of the order in normal course, and accordingly he erroneously computed that the from the date of order the appeal has been filed after about 127 days and further concluded that as the appeal was to be filed within $60 + 30 = 90$ days, he has no power to condone the delay and accordingly dismissed the appeal. Learned Counsel states that this presumption by the learned Commissioner (Appeals) is bad in law under the admitted facts that the order-in-original have been returned to the department with the remark 'premises vacated' about four years back. In such

circumstances, in absence of service of order-in-original on the appellant old address or the present address is not forthcoming, and as such the service by way of affixture on the notice board, in view of this Tribunal is not sufficient, as the same is by way of last resort when the department has failed to serve notice inspite of their best efforts.

4. Learned Authorised Representative appearing for the Department opposes the appeal and also relies on the following case laws in support of their contention that there is sufficient service of order-in-original.

- 1) Sunbeam Garments (P) Ltd., vs. Commissioner -2010 (256) ELT A90 (SC).
- 2) Indore Municipal Corporation vs. CC(A)-2016 (338) ELT 567 (Mad.)
- 3) ETA General (Pvt.) Ltd. vs. CC, Chennai -2013 (291) ELT 27 (Mad.)
- 4) CCE, Ludhiana vs. Mohan Bottling Co. (P) Ltd., -2010 (255) ELT 321 (P&H).
- 5) Global Overseas vs. CCE, Trichy-2011-TIOL-395-CESTAT
- 6) Smoash Heisure Ltd., vs. CCG&ST-Audit-II-2019-TIOL-3243-CESTAT-DEL.

5. Having considered the rival contentions, I find that the presumption of service in normal course is not available, in the facts and circumstances of the case, as the Id. Commissioner (Appeals) has erred in drawing such presumption and ignoring the fact that the order-in-original was returned with postal remark. In this view of the matter, I set aside the impugned order and hold that the appeal was filed before the Commissioner (Appeals) in time from the date of

knowledge. Accordingly, this appeal is allowed by way of remand and matter is remanded to the Commissioner (Appeals) with the direction to hear the appellant and pass order on merits in accordance with law. The appellant is also directed to appear before the Commissioner (Appeals) within a period of 45 days from the date of receipt of this order and seek opportunity of hearing. The appeal is allowed by way of remand.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant