CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

Appeal No. E / 50793 / 2020

[Arising out of Order-in-Appeal No. RPR-EXCUS-000-APP-124-19-20 dated 26.02.2020 passed by the Commissioner(Appeals) Central Excise & Customs, & Service Tax, Raipur]

ANJANI STEEL PVT. LTD. **APPELLANT**
Village-Ujalpur, Post Gerwani.
The Ghargora, Distt. Raigarh (CG).

Vs.

COMMISSIONER, CENTRAL EXCISE, & CUSTOMS, RAIPUR **RESPONDENT**

APPEARANCE:

Shri Manish Saharan, Advocate for the Appellant
Shri P. Juneja, Authorised Representative for the Department

CORAM:
HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION: July 16, 2021

FINAL ORDER No. 51692 /2021

PER RACHNA GUPTA

Present appeal has been filed to assail the order in appeal No. 124-19-20 dated 26.02.2020 vide which the Commissioner (Appeals) has rejected the appeal filed before him by the appellant on the ground that the same is barred by time invoking section 35(1) of Central Excise Act, 1944.

2. I have heard Shri Manish Saharan, learned Counsel appearing for the Appellant and Shri P. Juneja, learned Authorised Representative appearing for the Department.

3. Learned counsel for the appellant has submitted that the appellant has sufficient cause to explain the delay of one year and 9 months in filing this appeal but the same has not been considered by the Commissioner (Appeals). It is submitted that the present

appeal arise out of Show Cause Notice dated 31.03.2006 which has suffered two rounds of litigations being remanded by the Tribunal vide order dated 15.9.2014. It is further submitted that the order-in-original passed thereafter is of 31.10.2017 i.e. after three years of directions of this Tribunal for rehearing the matter and the Order-in-Appeal as has been challenged in this appeal was also announced after more than two and a half years. First order-in-original was also announced after one year and six months of passing of show cause notice. This time period is impressed upon as the reason for not seeking the copy of Order-in-Original. Further, since the Order-in-Original was demanded by the appellant vide their letter dated 09.7.2019 and copy thereof was forwarded by the Department vide their letter dated 17.7.2019 which was ultimately received on 19.7.2019, the appeal preferred before Commissioner (Appeals) was very much within 60 days of the said receipt. The Commissioner (Appeals) order rejecting the appeal being filed with delay of one year and 9 months is, therefore, prayed to be set aside and the appeal is prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative has impressed upon the paragraph 5.1 of the Order under challenge where the Commissioner (Appeals) has specifically taken note that the order-in-original dated 31.10.17 was sent to the appellant by speed post of 10.11.2017 which has never been received back undelivered. He held that, " it is obvious that the same order would have been served within a reasonable period of one week." Based on this observation that the Commissioner (Appeals) has held the appeal to have been received after a delay of one year and nine months and accordingly, rejected as barred by time. There is no infirmity thereof in the order under challenge. The appeal is, therefore, prayed to be dismissed.

5. After hearing the parties and perusing the record, I observe the chronology of the event to be as follows:

S.No.	Order	Passed on	Remarks
1.	Show Cause Notice	31.3.2006	order passed alleging wrongful availment of CENVAT credit of Rs.15,62,562/-.
2	Order-in - Original	21.09.2007	Order passed after one year and 6 months
3	Order-in-Appeal	17.3.2008	Order passed after one and a half years dismissing the appeal filed by the Department
4.	FINAL ORDER NO. A/ 53558 /2014	15.09.2014	Order passed after more than 6 years remanding the matter to be reheard in the light of decision of Vandana Global vs. CCE Raipur [2010 (253) ELT 440 (TRI-LB)]
5.	order in original at second round	31.10.2017	Order passed after three years of remand disallowing the Cenvat Credit and confirming the recovery of Rs.15,62,562/-
6.	order in appeal/ order under challenge	26.2.2020	Order passed after more than two and a half years
7.	date of appearance of the appellant before original adjudicating authority as apparent from the order dated 31.10.2017.	14.09.2017	when personal hearing was given

6. From the above chronology, I do not find any fault on the part of the appellant to form a reasonable apprehension of receiving the order not prior than 2 to 3 years. I also observe that the Commissioner (Appeals) has considered the date of communication of order dated 31.10.2017 i.e. 10.11.2017 on which date the department mentioned to have despatched the said order to the present appellant by speed post. First of all, date of despatch cannot be the date of communication. As per General Clauses Act, dispatched letter cannot be presumed to be delivered before 15

days of date of despatch. Secondly, despatching the order by speed post is not acceptable mode of service. I rely upon the decision of Hon'ble High Court of Mumbai in the case of **Amidev Agro Care Pvt. Ltd. vs. Union of India** reported in **[2012 (26) STR 299**] wherein it was held that sending of order by speed post is not a sufficient compliance to the provisions of section 37C (1)(a) of Central Excise Act. It was held in that decision that the order is to be served on the assessee or agent sending it by registered post AD or by such other modes of service as are specified under section 37C of the Act. The order dismissing the appeal by accepting dispatch of order by speed post as valid service was set aside.

7. Tribunal Delhi also, in the case of **Sunrise Corporation vs. Union of India Amritsar** reported in **[2012 (280) ELT 148]** has held based upon the finding of Larger Bench of this Tribunal, in the case of **Margra Industries vs. Commissioner of Customs, New Delhi** reported in **[2006 (202) ELT 244]** that it cannot be presumed that the despatch of the order by speed post, in the absence of any proof of delivery results in communication of the order. There is no scope of presumption in taxing matters and deemed service provisions under section 27 of the General Cases Act, 1897 do not apply. I observe that there is no document produced on record by the department about the letter despatched on 10.11.2017 by speed post to have specifically been received by the appellant. In absence of thereof, the order of Commissioner (Appeals) presuming the date of communication to be 10.11.2017 is nothing but his own assumption and presumption.

8. I simultaneously observe that section 35F of Central Excise Act mandates that the appeal before Commissioner (Appeals) is to be filed within 60 days of receipt of the order by Original Adjudicating Authority. In addition, it mandates that the Commissioner (Appeals) can condone the delay on sufficient cause being shown but not beyond the period of 30 days from the expiry

of said period of 60 days. In view of the said statutory mandate, I am of the opinion that Commissioner (Appeals) had no option to condone the delay which involves more than 90 days from the date of receipt of the order challenged before him. Seen from that angle, there seems no infirmity in the order under challenge.

9. Further basic principal of adjudication is that none shall be condemned unheard and that the hyper-technical approach may not be taken. It has been held by Hon'ble Apex Court in the case of Balwant Singh vs. Jagdish Singh reported as [2010 (4) SCC 551 (SC)] that phrase "sufficient cause" has to be construed liberally so as to advance substantial justice, when the delay is not on account of any dilatory tactics, deliberate inaction or negligence on part of the applicant. Also I am of the opinion that adjudication on merits shall not be prejudicial to the interest of either of parties to this alliance.

10. Coming to the facts of the present appeal, I observe that the appellant has sent a letter to the department on 9.7.2019 requesting for copy of the order-in-original dated 31.10.2017 informing that the same has not been received by the appellant. I also have perused the response of the department to this letter vide their letter dated 17.7.2019 providing the copy of said order (Order in Original) to the appellant. The said letter is absolutely silent about the copy of Order-in-Original to have earlier been despatched to appellant either by speed post or by any other mode of service. Said letter was received by the appellant on 19.7.2019. The appeal before the Commissioner (Appeals) was filed on 13.8.2019 i.e. within a one month of receiving the copy of order dated 31.10.2017.

11. Keeping in view the above discussion and above mentioned chronology, I hold that the appellant has sufficient cause for filing the appeal on 13.8.2019 against Order of 31.10.2017. Accordingly, said delay is hereby condoned. Resultantly, the matter is remanded back to Commissioner (Appeals) for

adjudicating the matter on merits. Since the substantial time has already been taken in adjudication of Show cause notice dated 31.3.2006, Commissioner (Appeals) is directed to decide the matter within two months of receiving the copy of this order.

12. Consequent to our entire above discussion, the present appeal stands allowed by way of remand.

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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