CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

COURT NO. II

Service Tax Appeal No.50940 of 2021 (SM)

[Arising out of Order-in-Appeal No.421(SM)ST/JPR/2020 dated 14.09.2020 passed by the Commissioner (Appeals), Central Goods & Service Tax and Excise and Customs, Jaipur.]

Shri Ramesh Chandra Dusad, Prop. of **Appellant**
M/s. Perfect Electric Works,
H-29, Tulsi Marg, Bani Park,
Jaipur-302 016 (Rajasthan)

VERSUS

Commissioner of Central Excise & Central Goods & Service Tax, **Respondent**
NCR Building, Statue Circle, C-Scheme,
Jaipur, Rajasthan.

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the appellant.
Ms. Tamanna Alam, Departmental Representative for the respondent.

CORAM:

HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.50325/2022

DATE OF HEARING/DECISION:29.03.2022

ANIL CHOUDHARY:

Heard the parties.

2. The issue in this appeal is *prima facie* whether show cause notice was served on the appellant by the Adjudicating Authority. The ex parte order-in-original is silent as regards the manner in which the show cause notice was served. It even does not mention how the show cause notice was issued i.e. whether by post or whether served in person.

3. I further find that the appellant had raised the issue of non-service of show cause notice before the Commissioner (Appeals). The appellant had also raised the ground with regard to limitation, as the demand was raised for the period July, 2012 to March, 2013, vide show cause notice issued in April, 2018. It has also been contended before the Commissioner (Appeals) that the appellant had deposited the admitted tax of Rs.6,66,286/- vide 18 challans in March, 2015.

4. From the impugned order, it appears that the Commissioner (Appeals) has dismissed the appeal for want of pre-deposit without making any inquiry with regard to the claim of the appellant that they have already deposited the tax amount of Rs.6,66,286/-. Further, that the Commissioner (Appeals) has not recorded any finding with regard to the ground of non-service of the show cause notice, which goes to the root of the matter. No valid adjudication order can be passed, without proper service of show cause notice.

5. In view of my observations, I allow this appeal by way of remand to the Commissioner (Appeals) with the directions that --

(i) to ascertain the claim of the appellant that they have deposited an amount of Rs.6,66,286/-. If the same is correct, then the appellant has satisfied the requirement of Section 35 F. Further, before proceeding on merits, the Commissioner (Appeals) shall inquire from the Adjudicating Authority as to the manner of the service of the show cause notice and shall obtain a copy of the evidence thereof. If no show cause notice has been served, in that case, the order-in-original is *ab initio void.* Only upon satisfaction with regard to the service of the show cause notice, the Commissioner (Appeals) shall proceed to decide the case on merits.

6. The appellant is also directed to appear before the Commissioner (Appeals) with a copy of this order and seek opportunity of hearing. Accordingly, the impugned order is set aside and the appeal is allowed by way of remand.

[order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.