# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# NEW DELHI.
## PRINCIPAL BENCH - COURT NO. II

## Service Tax Appeal No.51132 of 2022-SM

(Arising out of order-in-appeal No.42 (CRM)ST/ JDR/2021 dated 11.02.2021/ 24.08.2021 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jodhpur).

**M/s. Rajasthan Housing Board** **Appellant**
Shivagi Nagar, Near Sadar Police Station
Dungarpur -314001 (Rajasthan).

VERSUS

**Commissioner, Central Excise &** **Respondent**
**Central Goods & Service Tax,**
G-105, New Industrial Area
Opp. Diesel Shed, Basni , Jodhpur (Rajasthan).

**APPEARANCE**:

Sh. M. B. Maheshwari, C. A. for the appellant
Sh. Ishwar Charan, Authorised Representative for the respondent

**CORAM:**

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

**FINAL ORDER NO.50796/2022**

**DATE OF HEARING/DECISION: 24.08.2022**

**ANIL CHOUDHARY**:

Heard the parties.

2. The issue involved in this appeal is whether the ld. Commissioner (Appeals) has rightly dismissed the appeal on the ground of limitation.

3. The brief facts are that the appellant - Rajasthan Housing Board is a State Government Undertaking of the State of Rajasthan. Show cause notice dated 15.04.2019 was issued demanding service tax of Rs.15,23,336/- including cess, as it appeared that the appellant have wrongly carried

forward the opening balance of cenvat credit including cess in the ST-3 Return for the period October, 2013 to March, 2014, as against zero balance in ST-3 Returns filed for the period April to September, 2013, and thus, they have contravened the provisions of Cenvat Credit Rules. It further appeared that the appellant was liable to pay service tax of Rs.3,09,360/- for the month of June, 2016. There was further proposal to demand interest and penalty.

4. It is the case of the appellant that they were not served the copy of the show cause notice and they appeared before the Authority on receipt of the notice of personal hearing on 22.8.2019, and requested for a copy of the show cause notice, which was served by hand and the next date was fixed for hearing on 12.09.2019 and thereafter on 14.11.2019, however, the appellant failed to appear and vide ex parte order dated 22.11.2019, the show cause notice was adjudicated and the proposed demand was confirmed along with equal amount of penalty, with further amount of interest. It is further urged by the appellant that the said order-in-original was never served upon them and they came to know for the first time when they received intimation from their Bank – Union Bank of India. The intimation letter dated 17.10.2020 along with a copy of the attachment notice dated 16.10.2020 issued by the Department. It is further urged that

in terms of the attachment notice, the bank remitted the amount of adjudicated dues along with amount of penalty under Section 78 and under Section 77(1)(c) of Rs.18,32,696/- plus Rs.10,000/- respectively.

5. The appellant took steps to file appeal and approached the Department by their letter dated 19.10.2020 for supply of the certified copy of the order-in-original as well as show cause notice, and again requested by letter dated 19.11.2020. Thereafter, they received the uncertified copy of the order-in-original and filed appeal on 1.12.2020. Thus, the appellant have filed their appeal with a delay of 346 from the date of impugned order, and within time from the date of receipt of the copy of the impugned order. Further, the delay of about 4 days, (from the date of information) is condonable under the provisions of the Act. It is further urged that during the relevant period, due to COVID, Hon'ble Supreme Court has granted general condonation in the matter of limitation, and accordingly, the impugned order-in-appeal dismissing the appeal on the ground of limitation is bad in law and on facts and accordingly, the appellant prays for allowing their appeal with consequential benefits.

6. Ld. Authorised Representative for the Department relies on the impugned order.

7. Having considered the rival contentions, I find that the Commissioner (Appeals) has erred in deeming the service of the order-in-original, without their being any evidence of service on the appellant and /or proof of delivery. Further, admittedly, the appellant on coming to know by the intimation through the Bank, have taken the effective steps and have diligently filed the appeal and further, the said period is also covered by COVID disturbances and there being general condonation by the Hon'ble Supreme Court.

8. In this view of the matter, I set aside the impugned order and allow this appeal by way of remand to the Original Adjudicating Authority. The appellant is directed to appear with a copy of the reply to show cause notice within a period of sixty days from the date of receipt of copy of this order and shall also file copy of evidences in support of their contention and seek opportunity of hearing. The Adjudicating Authority is directed to pass a reasoned order, after granting personal hearing to the appellant, in accordance with law.

9. The appeal is allowed by way of remand.

(Order dictated & pronounced in open court).

(Anil Choudhary)
Member (Judicial)

Ckp