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

PRINCIPAL BENCH – COURT NO. IV

## SERVICE TAX APPEAL No. 54809 of 2023

(Arising out of Order in Appeal No. IND-EXCUS-000-APP-17-2023-24 dated 25.04.2023 passed by Commissioner (Appeals), Customs, Central Goods and Service Tax Central Excise, Ujjain Commissionerate]

**M/s. Galaxy Ratlam Vehicles Pvt. Ltd.** **...Appellant**
6/1 Kharakhedi,
Ratlam (M.P.),
Pincode - 457001

**Versus**

**Commissioner of** **....Respondent**
**Central GST & Central Excise,**
29, Bharatpuri Administrative Area,
Ujjain (M.P.)
Pincode - 456010

**APPEARANCE:**
Mr. Krishan Garg, Chartered Accountant for the appellant
Mr. V.J. Saharan, Authorized Representative for the Respondent

**CORAM : HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)**

Date of Hearing/ Decision: **29-11-2023**

## FINAL ORDER No. 51629/2023

**DR.RACHNA GUPTA**

The present appeal is filed against Order-in-Appeal No. IND-EXCUS-000-APP-17-2023-24 dated 25.04.2023, vide which appeal against Order-in-Original No.19/20-21/AC/ST/Demand/Ratlam dated 28.07.2020 has been rejected on the ground of limitation.

2. The facts of case are that the appellant provided repairs, reconditioning, restoration or decoration or other similar service for motor vehicles alongwith other services against various types of commissions. On the basis of scrutiny of documents submitted

by the appellant for April, 2014 to June, 2017, the appellant is alleged to not have declared and discharged service tax towards income from various types of commission and some other taxable heads viz. logistic charges, incentives as mentioned in the Show Cause Notice F.No.V(ST)15-39/Galaxy/AC/Adj/2019-20/3474 dated 18.10.2019 vide which an amount of Rs.32,14,167/- was proposed to be recovered from the appellant towards service tax liability alongwith interest at appropriate rate. Such proposal was confirmed vide Order-in-Original as mentioned above. Appeal against the said order has been rejected on the ground of limitation being filed much after a period of 60 + 30 days from the date of receipt of the Order-in-Original dated 28.07.2020. Being aggrieved, the appellant is before this Tribunal.

3. Heard Shri Krishan Garg, ld. Chartered Accountant for the appellant and Shri Vishawjeet Saharan, ld. Authorised Representative for the Revenue.

4. Ld. Chartered Accountant has mentioned that the appeal is very much in time as they never received the Order-in-Original dated 28.07.2020. It is only when recovery notice dated 23.02.2023 was received by the appellant, the appellant made request to the Jurisdictional Assistant Commissioner on 24.22.2023 to provide details of the demand pending against the appellant alongwith copy of the Order-in-Original dated 28.07.2020 and proof of delivery. It is brought to the notice that

E-mail dated 27.02.2023 was received from the department alongwith Order-in-Original dated 28.07.2020. Hence, the impugned appeal which was filed on 03.03.2023 before Commissioner (Appeals) is very much within a period of limitation with effect from 23.2.2023. However, the Commissioner (Appeals) has not provided any opportunity of personal hearing and rejected the appeal.

5. It is impressed upon that the order is liable to be set aside as the Order-in-Original came to the notice of the appellant, on the date of receipt of recovery notice only. It is also impressed upon that otherwise also the major period after Order-in-Original, was covered by COVID Pandemic phase and the said entire period has already been directed by Hon'ble Supreme Court in Writ Petition No.(C) No.3 of 2020 dated 10.1.2022 to be excluded from the calculating period of limitation.

6. Ld. Chartered Accountant has mentioned that serving notice to employee of the appellant is also not in compliance of section 37C of Central Excise Act, 1944. With these submissions, the order of Commissioner (Appeals) is prayed to be set aside and the appeal is prayed to be allowed.

7. Ld. Departmental Representative while rebutting the submissions has mentioned that notice was duly served on the appellant and was received by the employee of the appellant.

Vide e-mail dated 27.2.2023 the Superintendent Range-1, CGST & Central Excise, Ratlam informed that:

'PFA the copy of Order in Original dated 28.07.2020 in the name of M/s. Galaxy Ratlam Vehicles Pvt. Ltd. Also, the said OIO was received by Shri Aditya Sureka (receiving on first page of OIO). The same is emailed for necessary action at your end please.'

Such receipt has been relied upon the Commissioner (Appeals). Thus there is no infirmity in the order wherein the period of limitation has been calculated with effect from 28.07.2020 when said employee received the copy of Order-in-Original. Ld. DR impressed upon that the findings of order under challenge wherein the Commissioner (Appeals) held that as per section 37C there is proof of service of the order to the appellant under the statutory mandate of section 85 of Central Excise Act, 1944 with the Commissioner (Appeals), the appeal before him has rightly been rejected as being time barred. Ld. Departmental Representative impressed upon that the order is sustainable and appeal is accordingly prayed to be dismissed.

8. Having heard rival contentions, I observe that the Order-in-Original dated 28.07.2020 was served upon the appellant by two different modes one by speed post which apparently has not returned back 'undelivered'; two that the order was delivered to one of the employee of appellant namely Shri Prateek Rao. He admittedly is the employee of appellant as service supervisor. I am of the opinion that issuance of copy of order by speed post

does not amount to service thereof as such because it will be mere dispatch of the order. As per section 85 of Finance Act, 1994, period two months for filing appeal before the Commissioner (Appeals) has to reckon not from the date of Order-in-Original but from the date of receipt of the said order by the assessee. No doubt in section 37C, speed post is the mode of service but proof of dispatch is still mandatory. In the absence of proof of receipt of the O-I-O to the appellant sent by speed post, the same cannot be held to have been served.

9. With respect to second mode of service, I observe that Shri Prateek Rao, who admittedly received the order is an employee of the appellant in their workshop. In addition, ld. CA has placed on record an affidavit of Shri Prateek Rao, wherein he deposed that he received notice but he failed to bring it to the notice of the appellant. The contents of said affidavit are fully corroborated by partner of the appellant, Shri Abbas Ali Ghasswala. It gets clear from the affidavits that the Order-in-Original could never be brought to the notice of the appellant. It is only from the recovery notice dated 23.02.2023, the appellant acquired knowledge about the Order-in-Original dated 28.07.2020. On the very next day, appellant applied for the copy of the said order and not in later than 10 days of getting the copy of the impugned order, appeal has been filed.

10. In totality of the circumstance, I am of the opinion that the present appeal shall not be thrown at the threshold and shall be decided on the merits of the case. With these opinion, I deem it a fit case to be remanded to the Commissioner (Appeals) with the direction to decide the appeal on merits of the case after giving reasonable opportunity of hearing to the appellant. The Commissioner (Appeals) is required to decide the same within four months from the date of receipt of copy of this order.

11. Resultantly, the present appeal is allowed by way of remand.

[Order dictated & pronounced in the open Court]

**(DR.RACHNA GUPTA)**
**MEMBER (JUDICIAL)**

Anita