CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

SINGLE MEMBER

Service Tax Appeal No. 55242 of 2023

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-42-23-24 dated 28.04.2023 passed by the Commissioner (Appeals), Central Goods and Service Tax & Central Excise, Bhopal)

M/s Hindustan Coca Cola Beverages Pvt. Ltd. **Appellant**
Plot No. 169/175, Industrial Area,
Pilukhedi, District-Rajgarh (MP)

Vs.

Commissioner, CGST & Central Excise, Division-IV, Bhopal **Respondent**

<u>Appearance</u>

Shri Mrinal Bharat Ram, Advocate – for the appellant

Shri Rohit Issar, Authorized Representative – for the Respondent

<u>CORAM :</u>

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION : 04/01/2024

Final Order No. 50013/2024

<u>Ashok Jindal</u>

The appellant is in appeal against the impugned order wherein learned Commissioner (Appeals) has dismissed their appeal as time-barred.

2. The facts of the case are that the adjudicating order dated 31.03.2022 was despatched by the adjudicating authority on 04.04.2022 which was received by the appellant on 05.04.2022 and appeal was filed before learned Commissioner (Appeals) on 03.06.2021 but the learned Commissioner (Appeals) considering

that the date of order is the date of receipt of order by the appellant and there is delay of four days in filing the appeal before the learned Commissioner (Appeals). Accordingly, appeal was dismissed as barred by limitation. Against the said order, the appellant is before me.

3. Heard the parties. Considering the fact that these facts on record that adjudication order dated 31.03.2022 was despatched by the Department only on 04.04.2022 which was received by the appellant only on 05.04.2022 and appeal was filed on 03.06.2022 which is well within the time of limitation prescribed under the Act. In that circumstances, I hold that appeal filed by the appellant before learned Commissioner (Appeals) is within time and same cannot be dismissed as barred by limitation. Accordingly, impugned order is set aside. Further, I find that the learned Commissioner (Appeals) has not decided the issue on merits, therefore, after setting aside the impugned order, I remand the matter back before the learned Commissioner (Appeals) for decide the issue on merits within 60 days of the receipt of this order. Appeal is disposed of by way of remand.

(Dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

RM