

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

PRINCIPAL BENCH - COURT NO.III

Service Tax Appeal No. 52023 of 2018

[Arising out of Order-in-Appeal No.221 (SM) ST/JPR/2018 dated 27.03.2018 passed by the Commissioner (Appeals), Central Excise and CGST, Jaipur]

M/s. Subham Minerals & Chemicals,
(A Unit of Shree Ram Lime Products Pvt. Ltd.),
Bapi, Distt.-Dausa (Rajasthan).

Appellant

VERSUS

**Commissioner of Central Excise &
Central Goods & Service Tax,**
A-Block, Surya Nagar, Alwar,
Rajasthan-301 001.

Respondent

APPEARANCE:

Shri Om.P. Agarwal, Chartered Accountant for the appellant.
Shri Anand Narayan, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO.59936/2024

DATE OF HEARING/DECISION :19.12.2024

BINU TAMTA:

1. The appellant is challenging the order-in-appeal no.221(SM) ST//JPR/2018 dated 287.03.2018. The Commissioner (Appeals) dismissed the appeal as time barred having been filed beyond the period of two months as stipulated under Section 85 of the Finance Act, 1994.

2. The submission of the learned Counsel for the appellant is that they had never received the copy of the order-in-original and they learnt about it only when they received the recovery notice dated 29.04.2015 (received by them on 12.05.2015) from the Range Officer and the very next day on

13.05.2015, they requested them to provide the copy of the order. In fact on receipt of the said letter from the appellant, the Range Officer sent the copy of the order-in-original by their letter dated 25.05.2015, (received by them on 01.06.2015) and accordingly, they filed the appeal before the Commissioner (Appeals) on 3.7.2015.

3. During the course of hearing, the learned Authorised Representative for the Department placed on record the communication dated 18.12.2024, intimating that the order-in-original was dispatched to the appellant on 27.02.2015 and the postal receipt for booking the post was dated 02.03.2015, copy whereof was enclosed.

4. We find that though the entry in the despatch register for postal dak mentioned about the dispatch to the appellant, however, the acknowledgement card was not placed on record, as according to the learned Authorised Representative, the same is not available. In the absence of the acknowledgement card, it cannot be said that the copy of the order-in-original was received by the appellant. The provisions of Section 37C (1) of the Central Excise Act, 1944, provides for specific mode of service and one of which is by registered post with acknowledgement due or speed post with proof of delivery. The learned counsel for the appellant has relied on the decision of the Rajasthan High Court in **R.P. Castings Pvt. Ltd. Vs. CESTAT, New Delhi** ¹, whereby the learned Division Bench set aside the delay of nearly 10 years in filing the appeal on the ground that there is nothing on record to show that after sending the copy of the order through registered post, the acknowledgement due was produced. Further, observing

¹ 2016 (344) ELT 168 (Raj.)

that in absence of service of copy of the order in the manner prescribed under Section 37C (1) of the Act, the delay cannot be attributed towards the appellant for challenge of the order.

5. Following the order of the Rajasthan High Court, we are of the view that since in the present case also, the Department has failed to produce the acknowledgement card of service, the Appellate Authority has erred in rejecting the appeal on the ground of delay. We therefore, set aside the impugned order and send the matter back to the Commissioner (Appeals) to consider the appeal on merits.

6. The appeal is, accordingly allowed by way of remand.

[Operative portion already dictated & pronounced in open court]

(Binu Tamta)
Member (Judicial)

(Hemambika R.Priya)
Member (Technical)

Ckp.