CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 51670 of 2019

(Arising out of Order-in-Appeal No. 308(CRM)ST/JDR/2019 dated 28.03.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jodhpur (Rajasthan)

Ramkishan Delu **Appellant**
Ward No. 1, Jail Road, Nokha,
Distt. Bikaner (Rajasthan)

Versus

Commissioner (Appeals), Central Excise & Central Goods And Service Tax, Jodhpur **Respondent**
G-105, New Industrial Area,
Opp. Diesel Shed, Basni, Jodhpur
Rajasthan - 342001

<u>Appearance:</u>

Present for the Appellant: None

Present for the Respondent: Shri Manoj Kumar, Authorized Representative

<u>CORAM:</u>

Hon'ble Dr. Rachna Gupta, Member (Judicial)
Hon'ble Mr. P.V. Subba Rao, Member (Technical)

Date of Hearing/Decision : 10/02/2025

Final Order No. 50316/2025

<u>Dr. Rachna Gupta:</u>

The present appeal is filed to assail the Order-in-Appeal No. 308/2019 dated 28.03.2019 vide which the appeal against the Order-in-Original No. 44/2015 dated 23.02.2015 has been dismissed holding the appeal to be time-barred in terms of proviso to (3A) of Section 85 of Finance Act, 1994. Hence the appeal has been dismissed without going into the merits of the case.

2. None is present for the appellant. Written request for adjournment is received from the authorized counsel for the appellant. However, it is observed that vide the order of last date of hearing dated 06.12.2024, it was made clear that on the next date of hearing the appeal shall be disposed of irrespective of the presence of the appellant. In view of the same arguments on behalf of the department herein heard.

3. Learned Departmental Representative has submitted that the appeal was filed after the delay of 3 years 9 months and 15 days of receiving the Order-in-Original No. 44/2015 dated 23.02.2015 the delay is abnormal which is not at all explained. Hence no error has been committed by Commissioner (Appeals) while holding the appeal before him as time-barred. Learned Departmental Representative reiterated the finding of impugned order. Relying upon the decision of Hon'ble Supreme Court in the case of **Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur**[1] has prayed for the dismissal of the present appeal.

4. Having heard the department perusing the entire record of the appeal including the grounds of appeal, we observe that the impugned order is an order rejecting the appeal not based on the merits but based on the technical grounds of limitation. Commissioner (Appeals) has observed as follows:

> "5. I have carefully gone through the case records and submissions made by the appellant in their appeal memo as well as during the course of personal hearing including additional submissions made at the time of personal hearing. First of all I take up the issue of condonation of delay in filing of appeal. I find that OIO No. 44/2015-ST(Dem.) has been issued by the Assistant Commissioner, Central Excise & Service Tax Division on 23.02.2015

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1 **2008 (221) ELT 163 (SC)**

> whereas the appeal has been filed on 06.12.2018 after a delay of 3 years & 9 and a half months of issuance which is abnormal delay, therefore, the Assistant Commissioner, Central Excise & Service Tax Division-G, Bikaner was requested to verify the date of delivery of the OI0, in reply of which he has submitted vide his letter C. No. IV(ST)722/SKR/2013/1089 dated 28.02.2019 that OI0 No.44/2015-ST(Dem.) dated 23.02.2015 was dispatched to Sh. Ram Kishan Delu, Ward No.1, Jail Road, Nokha, Distt.-Bikaner on 25.02.2015 through registered post. He also furnished copy of dispatch register & postal receipt of the same. He further submitted that the said OlO has not been returned by the postal authorities as undelivered. Thus, the said OIO has been delivered by the postal authority in maximum time within 7 days as Nokha is not far from Bikaner. Therefore the date of service of OIO might be 04.03.2015. I find that the OIO was sent at the correct address as mentioned in the appeal Memo."

The appellant has not come present to contest these findings nor any evidence contrary to these findings has been brought on records. The grounds of appeal are silent to this effect. Resultantly, we do not find any reason to differ from the findings as arrived by the Commissioner (Appeals) (as noted above).

5. The Hon'ble Supreme Court in **Singh Enterprises** (supra) has already held that the Commissioner (Appeals) has the power to condone the delay only up to 30 days after the expiry of 60 days from the date of receipt of the order in original. In the present case, the order in original dated 23.02.2015 was duly dispatched by the department to the appellant on the date of order itself and the same address on which the show cause notice was served to the appellant which was duly received. The presumption of service is very much attached to the said dispatch. Though, the presumption was rebuttable but the appellant has not produced any document on record to rebut the same. He has not even appeared in person to make any submission in rebuttal thereof. Resultantly,

we do not find any infirmity in the impugned order. The same is hereby upheld. Consequent thereto, the appeal is dismissed.

(Dictated & pronounced in open Court)

(Dr. Rachna Gupta)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

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