CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH – COURT NO.3

Service Tax Appeal No. 50003 Of 2020

[Arising out of Order-in-Appeal No. 68/ST/DLH/2019 dated 27.09.2019 passed by the Commissioner (Appeals) of CGST & Central Excise, Delhi]

I Process Services India Private Limited **: Appellant**
Plot No. 313, Udyog Vihar Phase-IV
Gurugram, Haryana

Vs

COMMISSIONER OF CENTRAL GOODS **: Respondent**
Service Tax, Central Excise, Delhi North
Room No. 134, C.R. Building I.P. Estate
North Delhi

APPEARANCE:
Shri Deepak Singla, Chartered Accountant for the Appellant
Shri Rajeev Kapoor, Authorised Representative for the Respondent

CORAM :

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

FINAL ORDER No. 50916/2025

Date of Hearing:30.05.2025

Date of Decision:30.05.2025

BINU TAMTA

I Process Services India Private Limited is challenging the Order-in-Appeal No. 68/ST/DLH/2019 dated 27.09.2019 whereby the Commissioner (Appeals) rejected the appeal on the ground of being beyond the limitation.

2. The order-in-original in the present case was passed by the adjudicating authority on 13.12.2018. The submission of the learned counsel for the appellant as noted in the impugned order is that the

appellant received the copy of the order-in-original on 03.05.2019 and filed the appeal on 31.05.2019. The plea taken by the appellant is that they received email dated 25.04.2019 whereby they were asked about the details of any appeal being filed against the order-in-original or the details of the payment of service tax as the demand was confirmed. On receipt of the said email, the legal consultant of the appellant visited the Division office on 03.05.2019 and requested for a copy of the order-in-original, which was provided to him.

3. The Commissioner (Appeals) has taken a view that the order-in-original dated 13.12.2018 was despatched by Speed Post to the appellant on 24.01.2019 and assuming the maximum time required for delivery, the same should have been received by the appellant by 31.01.2019 and therefore, the appeal should have been filed latest by 30.04.2019. In view of the provisions of Section 85 of the Finance Act, 1994 and in view of the decision of the Supreme Court in **Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur[1],** it was held that the appeal filed on 31.05.2019 was beyond the period of 2 months and even after allowing the extended period of 30 days, the appeal was barred by time.

4. We find that the learned Commissioner has proceeded on assumption and presumption that the order despatched on 24.01.2019 should have been received by the appellant latest by 31.01.2019. The provisions of Section 37C of the Central Excise Act which is applicable to the provisions of the service tax as per Section 83 of the Finance Act, 1994 provides that any decision or order passed shall be served by tendering the same by registered post with

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1 2008 (221) ELT 163 (SC)

acknowledgement date or by speed post with proof of delivery. The department having failed to produce the proof of service cannot seek shelter that the order despatched on 24.01.2019 was served on the appellant. In absence thereof, the plea taken by the appellant that the copy of the order-in-original was procured by their legal consultant on their visit to the Divisional office on 03.05.2019 has not been disputed by the Revenue. It is also substantiated by the observations made by the Commissioner (Appeals) that the order-in-original submitted by the appellant in the appeal memorandum is neither original nor certified by any authority.

5. In the circumstances, accepting the plea of the appellant that the order-in-original was received on 03.05.2019 and the appeal filed on 31.05.2019 was within time and could not have rejected as being time barred. We are of the view that the appeal needs to be remanded back to the Commissioner (Appeals) to be considered on merits, in accordance with law.

6. The impugned order is, therefore, set-aside. The appeal is, accordingly, allowed by way of remand.

(Dictated & pronounced in the open Court)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.