CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 50757 of 2021

[Arising out of Order-in- Appeal No. 315 (CRM) ST/JDR/2020 dated 22.10.2020 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur-G-105, Jodhpur]

M/s. Rameshwar Lal, **...Appellant**
S/o Urjaram Jangu,
Behind Jain Public School,
Near Navalpuri Math,
Gogagate, Bikaner (Rajasthan)
Old address
M/s Rameshwar Lal,
Sinwaro Ki Dhani, Gognada,
Ratdi, Alai,
District Nagaur-341001 (Rajasthan)

VERSUS

Commissioner of Central Excise & CGST, Jodhpur **...Respondent**
G-105, New Industrial Area, Basni,
OPP Diesel Shed, Behind Aiims,
Jodhpur 03]

APPEARANCE:
Shri Arun Goyal, Advocates for the Appellant
Ms. Jayakumari, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 30.04.2026
DATE OF DECISION: **05.06.2026**

FINAL ORDER NO. 51042/2026

DR. RACHNA GUPTA

M/s Rameshwarlal (Proprietor), the appellant is a service provider.

The service rendered was opined by the department to be taxable. But the appellant had not obtained service Tax Registration based on the information received through third parties, the appellant was asked for reasons for not paying service tax.. The service provider/ appellant vide letter dated 16.06.2016 (received on 20.07.2016) submitted that they were providing Tata Tauras Tippers (earth moving equipment's) to various parties on rent as per contracts. They further submitted that they were engaged with only two companies namely M/s Isolux Corsan and M/s Vajra Ir tra Projects Ltd. They contended that in the work orders of both the companies, it was mentioned that Service Tax was to be paid by the service recipients and therefore the appellants were not liable for payment of Service Tax. They also submitted an affidavit dated 22.06.2016 and sample copies of contracts with these companies. Ongoing through the copies of contracts, department found that appellant had provided services to more than two service recipients and the clause of payment of service tax as contended by the service provider was mentioned in work order of only M/s. Isolux Corson Pvt Ltd. No other document was provided by the appellant.

2. On examination of final accounts, it was observed that the appellant has received hire charges of Rs. 4,96,94,456/- and hiring of tippers amounted to providing 'Supply of Tangible Goods Service' during

the financial years 2012-13 to 2015-16 and Service Tax on the aforesaid value worked out to Rs. 63,98,399/-.

3. Since the appellant never disclosed the said income and suppressed the material facts from the department in respect of rendering of taxable services, department issued the show cause notice bearing no. 02/2017 dated 20.04.2018 by invoking extended period of limitation proposing recovery of the aforesaid amount of service tax Rs. (68,98,599/-) along with interest at appropriate rate and the proportionate penalties. The proposal in the SCN were confirmed vide order-in-original no. 10/2019 dated 27.03.2019. Appeal against the said order has been dismissed on grounds of limitation vide order-in-appeal bearing no.315/2020 dated 22.10.2020. Being aggrieved, appellant is before this Tribunal.

4. We have heard Shri Arun Goyal, advocate for the appellant and Ms. Jayakumari Authorized Representative for the Respondent.

5. Ld. Counsel for the appellant submitted That the appellant in its appeal before the Commissioner (Appeals) had stated that they had received the order in original dated 27.03.2019 on 10.01.2020. But commissioner (Appeals) has wrongly held that on the order in original was received by appellant's advocated namely Kuldeep Jalan on 31.05.2019. Ld. Counsel submitted that Shri Kuldeep Jalan was never authorized by the

appellant to be his representative or to receive the copy of Order in Original. The appellant had engaged advocate namly Shri Amit Dave, who only appeared for Personal Hearing in response to the Show Cause Notice during the adjudication proceedings and reference is there in O-I-O in para 13 thereof. The appeal before commissioner appeals was filed on 12.03.2020 i.e., within the period of limitation prescribed for the purpose from the date of receipt (10.01.2020). Thus, the findings in the impugned order (O-I-A) are misplaced and are incorrect regarding delayed filing of appeal and the same deserves to be set aside. The appeal is prayed to be allowed by way of remand to the First Appellate Authority for fresh decision on merits.

6. While rebutting these submissions Ld. DR appearing for the department has relied upon the written acknowledgment of receipt by Adv. Kuldeep Jalan who had represented appellant at the stage of investigation & had submitted documents on behalf of the appellant. In view there of the O-I-A under challenge is prayed to be upheld.

7. Having heard the rival contentions, it is observed from the record that order in original dated 27.03.2019 was challenged before commissioner (appeals) in the appeal filed on 12.03.2020. The said appellate authority has held the appeal time barred relying upon the fact

that O-I-O dated 27.03.2019 was received by appellant counsel, Adv. Kuldeep Jalan on 31.05.2019. Hence, the appeal before him should have been filed before on or before 30.07.2019. Before us the appellant has denied said Adv. Kuldeep Jalan to be his representative. It is mentioned date O-I-O was received by appellant's C.A on 10.01.2020 and that their authorized representative/ advocate was Mr. Amit Dave.

8. We have perused the report regarding service of O-I-O as received from the concerned Commissionerate. It reads as follows: -

As reported by the JRO, the OIO could not be delivered at the given address since the addressee was not residing in the said village and was stated to be living outside. In view of the non-availability of the notice at the registered address, the Order was served upon Shri Kuldeep Jalan, Advocate, who is the authorized representative of the notice (Acknowledgement letter enclosed). It is further reported that Shri Kuldeep Jalan had earlier represented the notice during the course of investigation and had also submitted certain documents on his behalf. Hence, service of the Order upon him was considered appropriate.

9. Along with the report is a written acknowledgment of Kuldeep Jalan for receiving the copy of O-I-O on 31.05.2019. Also, is his affidavit that the said order was handed over by him to the appellant 6 months later

than 31.05.2019. We also observe that the authorized representative who appeared for appellant before original authority was Adv. Mr. Amit Dave. Thus, there is nothing on record to show that advocate Kuldeep Jalan was ever authorized by the appellant.

10. The mail dated 03.12.2025 produced by the department revealed that O-I-O dated 27.03.2019 was dispatched on 12.04.2019, but was received undelivered on 24.04.2019 from postal authority with the remarks about appellant 'not found available'. This cannot be held to be sufficient service. Not even the deemed service in view of section 37C of Central Excise Act, 1944 read with section 83 of Finance Act,1994. As per sub clause(b) & (c), of the said section, it was mandatory that the copy of the O-I-O must got affixed either at place of business or Residence of the appellant and at the conspicuous part of the department's office. Apparently, these clauses have not been followed. Hence, we hold that mere dispatch of the O-I-O, which otherwise was received undelivered, was never served on the appellant.

11. Further department has not produced anything to show as to why the O-I-O was not dispatched to Adv. Amit Dave who appeared as appellant's representative before original authority. The appellant's contention is that his C.A received the Order-in-Original on 10.01.2020.

There is no evidence on records to falsify the same. The appeal in hand was filed before commissioner (Appeals), admittedly on 12.03.2020. In terms of section 85 (3 A) of finance Act, 1994, it should have been filed within two months on date of receipt of the order challenged. The date of receipt, in the light of above observations is 10.01.2020. Hence, the appeal against O-I-O dated 27.03.2019, received by appellant on 10.01.2020 should have been filed on or before 12.03.2020. Thus, it is clear that the appeal filed on 12.03.2020 is delayed by 2 days. The same provision (section 85(3A) of Finance Act, 1994) empowers Commissioner (Appeals) to condone the period of 30 days over above the said of two months. But appellant did not appear before him and did not plead for condonation of said miniscule delay.

12. In the given circumstances and in view of principles of natural justice we deem it fit that one opportunity of hearing be given to the appellant. Hence, we remand the matter to commissioner (Appeals) for the appeal to be decided on the merits after affording reasonable opportunity of representation to the appellant. The two days delay which occurred at the time of filing appeal before him shall be considered as condoned. Commissioner (Appeals) is required to pass de novo adjudication order within four months of receipt of the present order.

13. In light of above, the order under challenge (O-I-O dated 27.03.2019) is hereby set aside and the appeal is allowed by way of remand.

[Order pronounced in the open court on **05.06.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA. RAO)
MEMBER (TECHNICAL)

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