CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>NEW DELHI</u>

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 51393 of 2019

[Arising out of Order-in-Appeal No. 150(SM)ST/JPR/2019 dated 29.04.2019 passed by the Commissioner of Central Excise & Central Goods and Service Tax (Appeals), Jaipur]

Shri Dinesh Kumar Choudhary **...Appellant**
Village-Panihar, Post Sinodia,
Tehsil – Phulera, Distt. Jaipur,
Rajasthan - 303338

VERSUS

Commissioner of CGST & Central Excise-
Jaipur I **...Respondent**
NCRB, Statue Circle,
Jaipur, Rajasthan

<u>APPEARANCE:</u>
Ms. Jwaria Kainaat, Advocate for the Appellant
Shri Rakesh Kumar, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 18.03.2026
DATE OF DECISION: **<u>05.06.2026</u>**

FINAL ORDER NO. <u>51043/2026</u>

<u>DR. RACHNA GUPTA</u>

Present is the appeal against the Order-in-Appeal bearing No. 150/2019 dated 29.04.2019. Commissioner (Appeal) has rejected the appeal filed by the appellant on the ground of time bar without going into the merits of the case/impunged show case notice bearing No. 15/191/5376 dated 31.07.2012. The SCN proposed recovery of service tax amounting to Rs. 2,19,741/- for the period from April 2011 to September 2011 along with interest and the appropriate penalties alleging that the appellant was providing taxable 'Business Auxiliary Services' but neither took the registration nor was paying service tax. The said proposal was confirmed vide order-in-original bearing No. 02/2013 dated 31.01.2013. The appeal against the said order has been rejected vide the aforementioned Order-in-Appeal the order under challenge.

2. We have heard Ms. Jwaria Kainaat, learned Advocate for the appellant and Shri Rajeev Kapoor, learned Authorized Representative for the department.

3. Ld. Counsel for the appellant submitted that the appellant filed appeal before Commissioner (Appeals) within prescribed time frame of two months from the date of receipt of Order-in-Original. It is further submitted that the appellant was not aware about the proceedings initiated by the department, as the appellant had never received Show Cause Notice nor the notice from original adjudicating authority nor even the copy of Order-in-Original from the department. However, in Order-in-Appeal the Commissioner (Appeals) has wrongly observed that the appeal filed by the appellant is barred by limitation despite that the limitation starts from the date of communication of order. Though the Commissioner (Appeals) has observed that the date of communication shown by the appellant is not correct however he has not given the date on which the order was served upon the appellant. Except that in para 10 of impunged order it is recorded that as per the report of the Assistant Commissioner the Order-in-Original was sent vide registered post which did not return to their office. Ld. Counsel submitted that according to Section 37C of Central Excise Act as applicable to the given facts, u/s 83 of Finance

Act 1994; any document should be served/delivered upon/to the recipient. Non-returning of the dispatched process is wrongly held as due service by Commissioner (Appeals). The appellant has relied upon the following decisions in this regard:

(i) Bridge & Roof Co. (India) Ltd. vs CCE [2025 (1) TMI 144- CESTAT ND]

(ii) Shri Surya Prakash Gaur vs CCE [2023 (11) TMI 258- CESTAT ND]

Appeal is accordingly prayed to be allowed while setting aside the impunged Order-in-Appeal.

4. While rebutting these submissions Ld. DR has reiterated the findings of Commissioner (Appeals). It is further submitted that the Assistant Commissioner Jaipur vide letter dated 20.03.2019 informed that the impunged order was sent to the appellant on his address Village-Panihar Post-Sinodia, Tahsil Phulera Distt. Jaipur by Registered Post with Acknowledgment Due and didn’t return to their office. it is deemed to be servedas per law laid down by a catena of Judgements.

4.1 It is further submitted that Range officer send several letters to the appellant by registered post which also were never returned by the postal department. Date of dispatch is rightly considered as the relevant date for the purpose of limitation.

4.2 Once the appeal has been filed beyond the (60+30) days, the statutory limit as provided by Law, it is barred by limitation as per law laid down by a plethora of judgements of the Tribunal. Relying on the ratio laid down by the Hon’ble Apex Court in **Singh Enterprises vs Commissioner of C. EX., Jamshedpur reported**

as 2007(12) TMI 11 SC and Commissioner of Customs & C. Ex. Vs. Hongo India reported as 2009(3) TMI 31 SC.

4.3 Also, under Indian law, particularly Section 27 of the General Clauses Act, service of an order or notice via registered post to the correct address creates a presumption of service, meaning it's legally deemed served unless the addressee proves otherwise, even if returned with endorsements like "refused" or "not available”. Key case law like Jagdish Singh v. Nathu Singh and StateofM.P.vs.Hiralal supports this, establishing that proper dispatch creates a legal fiction of knowledge. While relying upon the following decisions, the appeal is prayed to be dismissed.

- **KRISHNA SWAROOP AGARWAL (DEAD) THR. LR. Versus ARVIND KUMAR 2025 (7) TMI 1451 Supreme Court of India Citation: 2025 INSC 859**
- **Greater Mohali Area Development Authority & Anr Versus Manju Jain 2010 (8) TMI 932 - Supreme Court**
- **State of M.P .v. Hiralal (1996): Affirmed the presumption of service when sent by registered post, making it unnecessary to prove actual knowledge.**
- **Krishna Kumar Gupta vs Manoj Kumar Sahu (2022): Reiterated that service is presumed to have been effected at the time of likely delivery unless proven otherwise.**

5. Having heard the rival contentions and perusing the records, it is observed and held as follows:

5.1 In the present case the order-in-original apparently was not dispatched by registered post. It was sent by speed post Ld. DR has relied upon section 37C of Central Excise Act, 1944 (CEA). Under the said section 37C, however, the order should have been sent by registered post. This section stands amended incorporating the speed post as another mode of dispatch provided there is proof of delivery also. In the present case, admittedly, there is no proof of delivery except what has been stated by the Assistant Commissioner in his comments is that the speed post which was sent to the appellant containing the order in original did not return to the office. Thus we observe that the moot questions to be adjudicated are:

(i) Whether sending of order by speed-post complies with the provision of section 37C(1)(a) of the Central Excise Act.

(ii) Whether proof of dispatch of a process can supplement the proof of service there of?"

Foremost, we have perused section 37C of the Central Excise Act, as was amended in 2013, which has been made applicable to service tax matter by virtue of section 83 of the Finance Act, same is reproduced below:

37C. (1) Service of decisions, orders, summons, etc.

(a) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served,- (a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgement ***due or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963,*** *to the person for whom it is intended or his authorized agent, if any.*

(b) If the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other placer of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended:

(c) If the decision, order, summons or notice cannot be served in the manner provided in clause (a) and (b) by affixing a copy thereof, on the notice board of the officer or authority who or which passed such decision, order or issued such summons or notice

5.2 We observe that Commissioner (Appeals) has cited and relied upon the unamended section 37C of the Central Excise Act, which reads as follows:

> Section 37C--- *(1) Any decision or order passed or any summons or notices issued under this Act or the Rules made thereunder, shall be served, -*
>
> *(a) By tendering the decision, order, summons or notice, or sending it by the registered post with acknowledgement due, to the person for whom it is intended or his authorized agent, if any;*
> *(b) If the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other placer of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended:*
> *(c) If the decision, order, summons or notice cannot be served in the manner provided in clause (a) and (b) by affixing a copy thereof, on the notice board of the officer or authority who or which passed such decision, order or issued such summons or notice*

Hon'ble High Court Mumbai, also in the case **AMIDEV AGRO CARE PVT LTD VERSUS UNION OF INDIA AND OTHERS [2012 (6) TMI 304 BOMBAY HIGH COURT]** held that Order is to be served on the assessee or his agent by Registered Post A.D. or any other mode specified in section 37C and mere proof of dispatch of order is not sufficient compliance of the section.

Otherwise also it is not merely the dispatch of process through Registered post with AD but the affixation if there is no proof of delivery, at the places as mentioned in sub clause (b) & (c) of section 37C, of Central Excise Act which completes the process for presumption in favour of service of the process (decision, order, summons or notice).

In M/s. Premier Garment Processing Vs. The Customs, Excise & Service Tax Appellate Tribunal, South Regional Bench, Annexe, Nungambakkam, Chennai 600 006 and another, reported in 2015 (39) STR 812 (Mad) after considering the contentions of rival parties, a Hon'ble Division Bench of this Court, held:

> *It is evident from Section 37C (1) (a) of the Act, prior to 10.5.13, service through speed post was not one of the modes of service of orders, decisions, summons, etc. On and from 10.5.13, speed post was made as one of the modes of service for orders, decisions, summons, etc., provided it is supported by proof of delivery. Therefore, it is clear that proof of service is mandatory for the service effected through speed post on and after 10.5.13, but prior to 10.5.13, service through speed post not being a recognised/approved mode of service as per the provisions of the Act, any service effected through speed post is not binding on the appellant/assessee.*
>
> *It is trite law that limitation has to be reckoned only from the date when the actual service has been effected, subject to fulfilling the mandatory requirement of showing proof of delivery.*

5.3 Hon'ble High Court Mumbai, also in the **case Amidev Agro Care Pvt. Ltd. v. UOI. reported as (2012) 26 STR 299 (Bom.)** held that Order is to be served on the assesseeor his agent by Registered Post A.D. or any other mode specified In Section 37C and mere proof of dispatch of order is not sufficient compliance of the section.

5.4 **In Saral Wire Craft Pvt. Ltd. v. CC. CE & ST 2015 (7) TMI 894 SUPREME COURT**were adjudication order was served on kitchen boy of the assessee, it was held to be not a proper service. As per section 37C of the Central Excise Act, 1944, notice must be served to the person for whom it isintended or his authorized agent under proof of acknowledgement. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The judgment lays down the pre-requisite for issuance of notice. Any notice issued in violation of section 37C is not valid. It is worth mentioning that section 37C has been made applicable to service tax also by virtue of section 83 of the Finance Act, 1994. Hence, the principle laid down in the judgment shall mutatis mutandis apply to notice served in service tax cases also.

5.5 **In Jay Balaji Jyoti Steels Ltd. v. Cestat, Kolkata (2015 (1) TMI 859-ORISSA HIGH COURT** where order was sent by speed post, it was held that post office issues receipt for both by registered post and by speed post. Hence, both have to be treated as registered post in view of section 28 of Indian Post Office Act, 1898. Only difference between the two is that charges payable are normally higher for 'speed post' for delivery at any early date. Further, insertion of 'or by speed post with proof of delivery' after the words 'sending it by registered post with acknowledgement due' in section 37C(1)(a) of Central Excise Act 1944 we.f. 10.05.2013 is clarificatory and procedural amendment. It is curative since various courts had held that communication of notices through speed post was in consonance with law.

5.6 We also observe the chronology of events to be as follows:

Revised Date Events

Sr. No.	**Date**	**Particulars**
1	29.11.2011 (Pb-Pg:11)	Service Tax registration Certificate
2	01.12.2011 (PB-Pg:1)	Letter received from

		Superintendent, to pay service tax on commission, and furnish copy of B/S and IT returns.
3	05.12.2011 (PB-Pg:3)	On advised appellant deposited service tax amount along with interest of Rs.1,94,356, after availing the exemption of Rs.10 lakh.. And submitted the documents as desired.
4	27.03.2012 (PB-Pg:2)	Appellant statement was recorded. Thereafter the appellant shifted to Jaipur for some employment
5	03.07.2012 (Pg:17-20)	SCN was issued **(Not received by the appellant)**
6	31.03.2013 (Pg:21-29)	Ex-parte OIO, confirmed the demand along with interest and penalty **(Not received by the appellant)**
7	21.12.2018 (Pb-Pg:04-04A)	Recovery letter, issued by Superintendent to Tehsildar. Somewhere in Jan 2019 the appellant through his friend came to know about this letter
8	04.02.2019 (Pb-Pg:05-6)	After recovery letter of Tehsildar, appellant wrote a letter to Superintendent, to provide SCN & OIO
9	04.02.2019	Received SCN and OIO
10	14.02.2019	Filed appeal before Commissioner (Appeals), with in time.
11	29.04.2019	OIA, Commissioner (Appeals) rejected the appeal on the ground of time bar without going into merits.

5.7 In the present case, apparently, the order was not dispatched by registered post. The order was sent by speed post and under the section 37C CEA, as got amended with effect from 2013, there should be proof of delivery also. In the present case, the period though is prior 2013 but admittedly, there is no proof of delivery since what has been stated by the Assistant Commissioner in his comments is that the speed post which was sent to the appellant containing the order in original did not return to the office. The concept of deemed service under unamended section is for the Registered post with Acknowledgment Due. Once neither the SCN nor the O-I-O was sent through Registered Post with AD, it is held that the concept of deemed service has wrongly been invoked.

5.8 Admittedly sub clause (b) & (c) of section 37C, CEA, 1944, have not been coplied with. It is held that in absence of said compliance, proof of service of the impunged O-I-O dated 31.03.2013 is mandatory. Since there is no such proof it is held that Commissioner(Appeal) has wrongly held the date of dispatch to be the relevant date for computing period of limitation.

5.9 It is clear that not even once the appellant got opportunity of being heard. He was not at all aware of and sent to be served upon him. The decisions relied upon by the department are not applicable to the present case. In Krishna Swaroop Aggarwal (supra), the process was received back as 'ND' (not delivered) which is not the fact of the present case. Other decisiopns also have different facts.

5.10 We are also conscious that if delay is not condoned, the appeal goes out of consideration at the threshold. We are conscious that Apex Court in the case of **COLLECTOR, LAND ACQUISITION ANANTNAG AND ANOTHER VS. MST. KATIJI AND OTHERS-1987 (28) ELT 185 (SC)** has held that no one shall prefer to cause prejudice to himself by a belated appeal. We are also conscious of the Apex Court judgment in the case of

N.Balakrishna Vs. M.Krishnamurthy - 2009 (228) ELT 162 (SC) held that the reason of delay has primacy over length of delay.To our opinion, the very basic principle of Principles of Natural Justice has been being violated by Commissioner (Appeals).

6. In view thereof and the above discussed decisions, we hereby setaside the impunged order of Commissioner (Appeals). Since there are no findings with respect to the merits of the Order in original as was appealed before Commissioner (Appeals), we hereby remand the matter back to Commissioner (Appeals) to decide the appeal on its merits after giving the proper opportunity of being heard to the appellant. The Commissioner (Appeals)is required to decide the matter with in three months of the receipt of the present order.

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

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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