CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. III

E–Hearing

SERVICE TAX APPEAL NO. 50968 OF 2021

[Arising out of Order-in-Appeal No. 44/2021 dated 31.03.2021 passed by the Commissioner (Appeals–II), CGST, Engineers India Limited, Annexe Building, 5th Floor, Bhikaji Cama Place, R. K. Puram, New Delhi–110066]

M/s. Libra Cable Private Ltd. ……... Appellant
B – II/32, Mohan Cooperative Industrial Estate
Badarpur, New Delhi–110044

vs.

Office of Commissioner (Appeals–II)–CGST ....Respondent
Engineers India Limited, Annexe Building
5th Floor, Bhikaji Cama Place
R. K. Puram, New Delhi–110066

AND

SERVICE TAX APPEAL NO. 50969 OF 2021

[Arising out of Order-in-Appeal No. 43/2021 dated 31.03.2021 passed by the Commissioner (Appeals–II), CGST, Engineers India Limited, Annexe Building, 5th Floor, Bhikaji Cama Place, R. K. Puram, New Delhi–110066]

M/s. Den FK Cable TV Network Private Ltd. ……... Appellant
B – II/32, Mohan Cooperative Industrial Estate
Badarpur, New Delhi–110044

vs.

Office of Commissioner (Appeals–II)–CGST ....Respondent
Engineers India Limited, Annexe Building
5th Floor, Bhikaji Cama Place
R. K. Puram, New Delhi–110066

APPEARANCE:

Mr. Vishal Agarwal, Mr. Abhishek Garg and Mr. Rishabh Chandal, Advocates for the Appellant

Mr. Aejaz Ahmad, Authorized Representative for the Department

CORAM: HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing :25.06.2026

Date of Pronouncement :15.07.2026

FINAL ORDER NO. 51186–51187/2026

PER: MS. BINU TAMTA

The appellant is aggrieved by the dismissal of the appeal on the ground of limitation by the Commissioner (Appeals) vide Order-in-Appeal No. 44/2020–21 dated 31.03.2021.

2. The adjudicating authority passed the Order-in-Original on 24.05.2019 and the date of dispatch of the said order is stated to be 31.05.2019 through speed post. According to the appellant, as per the appeal memo, ST-4 the date of communication of the Order-in-Original was 06.10.2020 by hand and the appeal was filed on 03.12.2020, which falls within the limitation period of two months as prescribed under the statute.

3. The Revenue on the other hand claimed that since the Order-in-Original was dispatched through speed post number ED9966401141N by the department on 31.05.2019, and as per the maximum time to be taken for delivery of domestic consignment to local and different parts of the country is 4 to 5 days, the Order-in-Original should have been received by the appellant by 05.06.2019 and the appeal should have been filed latest by 05.09.2019. It is the further submission

of the Revenue that the order sent by speed post was not received back undelivered. In this regard, the communication by the adjudicating authority dated 24.02.2021, clarified that the department never delivered or handed over the copy of the Order-in-Original to the appellant on 06.10.2020, as claimed by him. In the circumstances, the Revenue prayed that the appeal be dismissed.

4. Considering the rival submissions on the receipt of the Order-in-Original by the appellant and the revenue, we need to consider the statutory provisions i.e. Section 37C of the Central Excise Act, 1944 as made applicable to the provisions of the Finance Act. Section 37C read as:

> "**37C. Service of decisions, orders, summons, etc.--**(1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served
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> (a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due [2][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 (54 of 1963)], to the person for whom it is intended or his authorised agent, if any;
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> (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 place 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;
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> (c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice-board of the officer or authority who or which passed such decision or order or issued such summons or notice.
>
> (2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post [3][or courier referred to in sub-section (1)] or a copy thereof is affixed in the manner provided in sub-section (1)."

5. The provisions of Section 37C specifically provides that the service of decisions, orders or summons may be effected either by tendering the same or by registered post/speed post/courier with due acknowledgement and proof of delivery. The Revenue though substantiated the sending of the speed post to the appellant, however, have not proved the acknowledgement or receipt thereof. On the contrary, the Ld. Counsel for the appellant has pointed towards the postal remark on the envelope that "no person available by this name", which shows that the order was not actually delivered to the appellant. The Ld. Counsel has submitted that the order sent through speed post could not be served to them as they had shifted their office premises. However, as pointed out by the Ld. Authorised Representative, the change in the address of the office was after 20.11.2017 yet the show cause notice dated 05.03.2018 was duly delivered to the appellant and he attended the personal hearing.

6. Factually, we find merits in the submission of the Revenue that the change of address is merely a cover up as show cause notice and the personal hearing notices were duly received by the appellant despite change of address. However, considering the legal provisions as provided in Section 37C, the burden is on the Revenue to prove that the order was duly acknowledged and proof of service is placed in support thereof. The postal remark is evident of the fact that the service has not been effected on the appellant in terms of Section 37C and the benefit thereof has to be given to the appellant. In the fact and circumstances of the case, we find it appropriate to remand the matter back to the Commissioner (Appeals) to decide the appeal on merits.

7. The impugned orders are, therefore, set aside. The appeals are allowed by way of remand.

[Order pronounced on 15.07.2026]

(BINU TAMTA)
MEMBER (JUDICIAL)

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

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