CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

SERVICE TAX APPEAL NO. 53423 OF 2023

(Arising out of Order-in-Appeal No. 314(RLM)/ST/JPR/2022 dated 03.12.2023 passed by the Commissioner (Appeals), CGST, Jaipur)

S R ENTERPRISES
4427, Jat ke Kuwe ka Rasta,
5th Crossing,
Chandpole Bazar, Jaipur
Appellant

Vs.

COMMISSIONER OF CGST & CENTRAL EXCISE-JAIPUR I.
Commissioner (Appeals), CGST,
NCR Building, Statue Circle,
Jaipur, Rajasthan 302005
Respondent

APPEARANCE:
Ms. J. Kainaat, advocate for the appellant
Mr. Rajeev Kapoor, authorised representative of the department

Date of hearing: August 03, 2026

CORUM: DR. RACHNA GUPTA, OFFICIATING PRESIDENT
MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51342/2026

DR. RACHNA GUPTA:

The present appeal is filed to assail the Order-in-Appeal bearing no. 314/2022 dated 30.12.2022 vide which the appeal before him against the Order-in-Original bearing no. 139/2019 dated 09.08.2019 has been rejected as being time barred. The appellant was alleged to have not paid service tax on the taxable value of Rs. 3081760/- received by the appellant during financial year 2013-14 towards the services rendered by the appellant. The service tax amount to Rs. 380906/- was proposed to be recovered along with interest and penalty vide show cause notice no. 13-14/2018/5828 dated 15.10.2018. The said proposal was confirmed vide the aforementioned Order-in-Original. The appellant is aggrieved of his appeal against the said Order-in-Original to have been rejected as time barred.

2. While submitting on the appeal, learned counsel for the appellant has mentioned that the appellant had left the premises '23B Purani Basti, Nadi Area, Jaipur' to another premises bearing no. '4427, Jat Ke Kuwe Ka Rasta, 5^{th} Crossing, Chandpole Bazar, Jaipur'. This fact is also apparent from the work order dated 01.06.2012 but the show cause notice as well as the Order-in-Original was issued at the previous address of Nadi Area due to which neither the show cause notice nor the Order-in-Original was ever received by the appellant. The Order-in-Original is an ex-parte order. The information thereof was received from the appellant's bank when the the bank account was seized for outstanding service tax liability and the amount got deducted in the form of Demand Draft. It is thereafter the appellant demanded a copy of the show cause notice and the Order-in-Original which was provided to the appellant on 28.02.2022 and the appellant filed the appeal before Commissioner (Appeals) on 04.03.2022. The appeal was therefore in period of limitation and has wrongly been rejected as time barred. Submitting that the impugned proceedings are in violation of section 37(c) of the Central Excise Act, 1944 and that of section 83 of the Finance Act, 1994 that the order in challenge is liable to be set aside and the appeal is prayed to be allowed.

3. Learned authorised representative for the department, on the other hand, has reiterated the findings arrived at by Commissioner (Appeals).

4. Having heard both the parties, perusing the entire record, it is observed that the appellant was not registered under the Service Tax Commissionerate due to the belief that the services provided by the appellant to the Executive Engineer, Municipal Corporation, Jaipur, during the disputed period of financial year 2013-14 were exempted under Entry No. 12(A) of Notification 25/2012-ST dated 20.06.2012. The department proceeded against the appellant based on third party data, i.e., Form 26AS. There is no denial to the fact that in the said data the previous address of

the appellant of Nadi Area Jaipur was mentioned. The department has repeatedly sent the notices of hearing on the said address.

5. The period for filing the appeal before Commissioner (Appeals) is described under section 85(3A) of the Finance Act, 1994. The section reads as follows:

> 3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to Service Tax, interest or penalty under this Chapter:
>
> PROVIDED that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month."

6. The bare perusal reveals tha the relevant period of 60 days for filing the appeal before Commissioner (Appeals), is the date when the copy of order to be challenged is received by the person who need to challenge the said order.

7. In the present case, it is an apparent fact that the Order-in-Original is an ex-parte order. It is appellant's contention that not even the show cause notice was received by the appellant due to change of his address since the year 2012. The Order-in-Original was received by the appellant only on 28.02.2022. Thus, the period of 60 days as mentioned in above section 85(3A) of the Act shall reckon from this date. the appeal before Commissioner (Appeal) as was filed on 04.03.2022, the appeal is held to be well within the period of limitation. Commissioner (Appeals) has wrongly considered the date of Order-in-Original as the relevant date for the purposes of section 85(3A) of the Act.

8. In light of these observations, the order under challenge is hereby set aside. Since the order is on the technical ground of limitation and has no

discussion about the merits as dealt with by the original adjudicating authority, we remand the present matter to Commissioner (Apppeals) requiring him to adjudicate the appeal on its merits. Commissioner (Appeals) is required to pass the order within three months of receiving the copy of the present order after giving a reasonable opportunity of representation to the appellant. With these observations and the corrections, the present appeal is hereby allowed by way of remand.

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

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

Apoorva