

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV**

Appeal No. ST/1161/2011-CU[SM]

[Arising out of Order-in-Appeal No. 163(DKV) ST/JPR-I/2011 dated 31.03.2010, passed by the Commissioner of Central Excise, Jaipur]

M/s Shri Nand Kishore Sharma

....Appellant

Vs.

C.C.E., Jaipur

....Respondent

Appearance:

Sh. Kumar Vikram, Advocate for the Appellant
Sh. M.R. Sharma, DR for the Respondent

CORAM:

Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 16.01.2017

FINAL ORDER NO. 50513 /2017-CU[SM]

Per V. Padmanabhan

The present appeal has been filed against the Order-in-Appeal dated 29.04.2011 passed by the commissioner (Appeals), Jaipur in which the appeal filed by the Appellant was dismissed as time bar.

2. Aggrieved by the said order, in the present appeal, it has been submitted that the Order-in-Original was received by the appellant after delay of eight months. An affidavit to this extent certifying the date of receipt of the order as 20.12.2010 stands filed before the Commissioner (Appeals), who apparently did not take cognizance of the said affidavit.

3. With the above background, I heard Shri Kumar Vikram Id. Advocate for the appellant as well as Shri M.R. Sharma, Id. DR for the respondent.

4. I find that in the present appeal service tax demand is to the extent of Rs 12,445/-only. The Original authority has confirmed the same along with interest and penalties.

5. Section 35B (1)(2nd Proviso) reads as follows:

*"(i) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
(ii) the amount of fine or penalty determined by such order, does not exceed two lakh rupees"*

6. Since the tax involved in the present appeal is far less than the limit of Rs 2 lakh, i find that the appeal is not maintainable and hence the appeal is dismissed.

[Dictated and Pronounced in the Open Court]

**V. Padmanabhan
(Member Technical)**

RS