IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Service Tax Appeal No.ST/59919/2013-EX [SM]

[Arising out of Order-in-Appeal No.165/S.Tax/D-II/13 dated 29.07.2013 passed by the Commissioner (Appeals), Central Excise, New Delhi]

For approval and signature:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. H.S. Vision …Appellant

Vs.

C.S.T., New Delhi -I … Respondent

Present for the Appellant : Shri.Krishna Mohan K. Menon, Advocate & Shri Mohit Singh, Adv. & Shri Gautam Dhamija, Advocate
Present for the Respondent: Shri.R.K. Mishra, A.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 11/11/2016

FINAL ORDER NO. _56466/2016__

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 29.07.2013 passed by the Commissioner (Appeals), Central

Excise and Customs, New Delhi, whereby the appeal of the appellant was dismissed as time barred.

2. Shri Krishna Menon, the ld. Advocate appearing for the appellant submits that the adjudication order dated 07.11.2008 passed by the Additional Commissioner of Service Tax was received by the appellant on 18.03.2013 and there after the appeal was filed before the ld. Commissioner (Appeals) on 30.04.2013, which is within the time limit prescribed under Section 85 of the Finance Act, 1994. Thus, according to the ld. Advocate, there is no delay in filing of appeal, and as such, dismissal of appeal on the ground of limitation is not proper and justified. He further submits though the Department claimed that the order was sent through speed post, but no proof of delivery (POD) was submitted by the Department to support its stand that the order has been served/received by the appellant.

3. Shri R.K. Mishra, the ld. A.R. appearing for the Revenue reiterates the findings recorded in the impugned order.

4. I have heard the ld. Counsel for both sides and examined the records.

5. I find that though the Department has claimed that the order has been sent through speed post, but no proof of delivery is available to show that the order has in-fact been served on the appellant. On the contrary, since the appellant submits that the order was served on him on 18.03.2013 and thereafter, within the statutory time limit of 3 months the

appeal was preferred before the Commissioner (Appeals) on 30.04.2013, I am of the view that there is no delay in filing the appeal before the Commissioner (Appeals). Since the merits of the case had not been discussed and appeal was dismissed solely on the ground of limitation, I am of the view that the matter should go back to the Commissioner (Appeals) for passing a reasoned and speaking order on the Appeal filed before him.

6. Therefore, after setting aside the impugned order, the matter is remanded to the Commissioner (Appeals) for deciding the appeal afresh, after affording the opportunity of personal hearing to the appellant. The appeal is allowed by way of remand.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita