CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-DB

COURT –IV

Service Tax COD Application No.ST/COD/51002/2017-ST [DB] in Service Tax Appeal No.ST/51869/2017-ST [DB]

[Arising out of Order-in-Appeal No.139 (DKV)ST/JPR-I/2011 passed by the Commissioner (Appeals), CGST, Central Excise-I, Jaipur]

M/s.Marudhar Enterprises …Appellant

Vs.

C.C.E., Jaipur-I … Respondent

Present for the Appellant : Mr.Kumar Vikram, Advocate
Present for the Respondent: Mr.G.R. Singh, D.R.

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

Date of Hearing/Decision:09.04.2018

FINAL ORDER NO. ___51611/2018_____

PER: S.K. MOHANTY

Heard both sides

2. Feeling aggrieved with the impugned order dated 05.04.2011 passed by the Commissioner of Customs and Central Excise (Appeals-I), Jaipur, the appellant has preferred this appeal before the Tribunal. The appeal was filed on 11.10.2017. Since there was inordinate delay in filing the appeal, the Central Registry of this Tribunal has issued the Defect Memo, for removal of defects. Pursuant to the Memo

issued by the Tribunal, the applicant has filed the COD application, which was listed for hearing before the Tribunal today. In the COD application dated 06.12.2017, the applicant has stated that the impugned order was received by it on 24.07.2017 and the appeal was filed within the stipulated time as provided under Section 86 of the Finance Act, 1994.

3. The issue involved in this case relates to ascertainment of the fact, whether the date of despatch of the impugned order dated 05.04.2011 from the office of the Commissioner (Appeals) should be considered as the relevant date for communication, or on 24.07.2017 as claimed by the appellant regarding receipt of such order.

4. On the last date of hearing, the Bench directed the ld. AR for Revenue for ascertaining the fact regarding communication of the order to the applicant. Accordingly, the office of the Commissioner (Appeals), Jaipur vide letter dated 20.02.2018 has confirmed that the impugned order dated 31.03.2011 was sent through registered post on 05.04.2011 to the applicant under Postal receipt No.1229. The Postal receipt and the dispatch register for Postal Dak maintained by the Office of Commissioner (Appeals) were also enclosed to the letter dated 20.02.2018. With regard to service of decisions/orders etc., sub-section (2) of Section 37C of the Central Excise Act, 1944 made applicable to the Finance Act, 1994 mandates that every order passed, shall be deemed to have been served on the date on which the order is tendered or delivered by post. It is evident that the impugned order was sent to the applicant

through the Postal Department on 05.04.2011. Since the impugned order was sent by the Postal Department under Postal receipt No.1228, as per the mandates of Section 37 C, it has to be construed that the order has been served on the applicant within the reasonable time from the date of its dispatch. Further, we also find that except the submission of the affidavit that the order was communicated on 24.07.2017, the applicant has not produced any other documents to prove such facts regarding communication of the order. Thus, we are of the considered view that the date of sending of the impugned order through registered post i.e. on 05.04.2011 should be considered as the date of communication of the order. Since the appeal was filed after more than six & half years, thereafter, without explaining any reasonable cause for such delay, we are of the view that appeal cannot be entertained on the ground of limitation. We find that the Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise, Ludhiana vs. Mohan Bottling Co. (P) Ltd. - 2010 – TIOL - 840 HC P&H - CX, while interpreting the provisions of Section 37C of the Act, 1944, has held that sending of order through registered post will be construed as sufficient compliance of the said statutory provision and the date of sending the order should be considered as the date of receipt of the order by the addressee. The relevant paragraph in the said judgment is extracted herein below:-

> ***9.*** *We have carefully perused the judgments of the Apex Court in the matters of M.A. Mohammed Ismail's*

(supra) and in Raja Kumari (supra). We have also carefully examined Section 37C of the 1944 Act, Section 27 of the General Clauses Act and Section 144 of the Indian Evidence Act. Having examined, we are of the view that it can safely be said that sending the order at correct address by registered post is a sufficient compliance of Section 37C of the 1944 Act. It is for the assessee to rebut the presumption of service by cogent evidence that in fact order was never served upon him. In the present matter, assessee failed to discharge his burden and sending the order by registered post at the correct address is sufficient compliance.

5. In view of above, we do not find any merits in the COD application and accordingly, the same alongwith the appeal filed by the applicant/appellant is dismissed.

[Dictated and pronounced in the open Court]

(V.PADMANABHAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita