CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 52411 of 2018-SM

(Arising out of order-in-appeal No. IND-EXCUS-000-APP-812-17-18 dated 28.03.2018 passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Indore (M.P.)

M/s Shri Ameya Electricals Pvt. Limited **Appellant**
101, Princess Pride, 21/3 New Palasia
Indore-452001

VERSUS

Commissioner, CGST, CC & Central Excise **Respondent**
29, Bharatpuri Administrative Area,
Ujjain (M.P.)

APPEARANCE:

Sh. Ashutosh Upadhyay, Advocate for the appellant
Sh. K. Poddar, Authorised Representative for the respondent

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50701/2019

DATE OF HEARING: 29.04.2019
DATE OF DECISION: 29.04.2019

ANIL CHOUDHARY:

Heard the parties.

2. The issue in this appeal is –

(i) Whether the date of communication of the order-in-original has to be taken as 12 September, 2017, when the order was served on the security guard, as the factory was lying closed; and

(ii) Whether the show cause notice has been validly issued invoking the extended period of limitation.

3. Brief facts of the case are that the appellant is manufacturer of FTL Caps/ aluminium scrap, availing cenvat credit and paying duty on their final products. During the period 2012 to 2014, the appellant suffered loss of finished goods, due to heavy rain. During the course of internal audit sometime in February/ March, 2015 Revenue pointed out that they are liable to pay by way of reversal of cenvat credit on inputs and work in progress and also duty on finished products destroyed. The amount calculated as Rs. 3,09,931/-. The said amount was paid by various challans during 31 March, 2015 to 18 June, 2015. It was also pointed out that appellant have paid less duty on inward freight and outward freight as compared to balance sheet and that the differential duty was calculated as Rs. 6,725/- which was also paid by challan dated 18 June, 2015. Subsequently, show cause notice dated 26 May, 2016 was issued invoking the extended period of limitation for demand of interest and penalty. The show cause notice was adjudicated ex-parte by order-in-original dated 30 August, 2017. As the factory of the appellant was closed, the order was served on the security guard on 12 September, 2017. Subsequently, the appellant received the impugned order in the city office on 25 November, 2017.

4. When the appeal was filed before the learned Commissioner (Appeals), the same has been dismissed on limitation, taking the date of service of order-in-original as 12 September, 2017, and accordingly the learned Commissioner (Appeals) observed that the appeal is filed

beyond the condonable period of one month and was pleased to dismiss the appeal on the ground of limitation.

4. Learned Counsel for the appellant states that the security guard was not the proper person for service of the impugned order as required under the provisions of the Act. When the order was received by the Director at the city office, subsequently, on 25 November, 2017, is the effective date. Thus, the appeal was filed in time before the Commissioner (Appeals). Accordingly, he states that even the show cause notice has been erroneously issued invoking the extended period of limitation. Admittedly, the appellant has deposited the tax/ duty as calculated by the Revenue. The appellant has not paid the interest. There is no fact coming on record that the Revenue has ever pointed out that such interest was payable. Thus, the show cause notice invoking the extended period of limitation, is not maintainable.

5. Learned Authorised Representative for Revenue has relied on the impugned order and states that as the order-in-original is served on factory address. The effective date of service is 12 September, 2017. Further, the appellant never cared to inform their current correspondence address to the Department.

6. Having considered the rival contentions, Section 37C provides that all notices shall be served by tendering or sending it by registered post with acknowledgement due or by speed post or approved courier to the person to whom it is intended or his authorised agent, if any. Under the facts and circumstances, it appears that the appellant also has neglected in making proper arrangement for receipt of their mail/

dak. However, as the factory was lying closed, the notice was actually delivered to the management of the appellant only on 25 November, 2017 when the security guard delivered to the notice to the proper person, that can only considered as the effective date of service. The purpose of the notice is to put the requisite person on notice or alert so that he can take proper steps. Thus, I hold that the earlier date i.e. 12 September, 2017 was not the proper service on the security guard. Accordingly, I set aside the impugned order and allow the appeal by way of remand with direction to the learned Commissioner (Appeals) to decide the appeal on merit

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant