CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

SERVICE TAX COD APPLICATION No. 50468 of 2019

IN

SERVICE TAX APPEAL No. 51205 of 2019

(Arising out of Order-in-Appeal No. 02-03(SLM)ST/JPR/2015 dated 21.01.2015 passed by the Commissioner (Appeal), Central Excise Commissionerate, Jodhpur)

Nagaur Automobiles Pvt Ltd **........Appellant**
Outside Delhi Gate, Ajmer Road,
Nagaur.

VERSUS

Pr. Commissioner of Central Goods And Service Tax, Jodhpur 1 **.... Respondent**
NCR Building, Statue Circle, C-Scheme,
Jaipur (Raj.)-302005

APPERANCE:
Shri Mr. Pradeep Jain, Advocate for the Appellant
Shri Mr. A. Thaplial, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 51136 / 2019

DATE OF HEARING/DECISION: 07 August, 2019

JUSTICE DILIP GUPTA

The application filed by the Appellant for condoning the delay of 1146 days in filing the Appeal has come up for orders.

2. The appeal that seeks to assail the order dated 15 January, 2015 passed by the Commissioner (Appeals) was sent by speed post and was received in the Tribunal on 12

February, 2019. It was accompanied by an application for condoning the delay. Various defects were pointed out by the Registry of the Tribunal. A fresh appeal was then sent by the Appellant by speed post which was received in the Registry on 16 April, 2019.

3. It has been submitted by learned Counsel on the basis of the facts stated in the application filed for condoning the delay of 1146 days (i.e. three years and two months) that the Consultant of the Appellant had sent the Appeal by speed post to the Tribunal on 16 April, 2015 and so, the Appellant was under a bonafide belief that the same had been received by the Tribunal. However, the Appellant received a recovery letter from the Department informing that the appeal said to have been filed by the Appellant was not available on the records of the Tribunal Website. Thereafter, the Appellant enquired about the status of the appeal from the Tribunal but as the appeal could not be traced out, it appeared that the Appeal sent by speed post was not received by the Tribunal "due to postal handling". It is also been stated that since the appeal was sent on 16 April, 2015, it was not possible for the Appellant to obtain the tracking report from the postal department. A copy of the acknowledgment issued by the postal department has, however, been placed. It has, therefore, been stated that delay of 1146 days is not intentional and was for a reason beyond the control of the Appellant.

4. Shri Sanjay Jain, learned Authorised Representative of the Department has, however, brought the attention of the Bench to the address mentioned in the postal receipt enclosed by the Appellant in connection with the speed post stated to have been sent to the Tribunal on 16 April 2015. It is as follows:

> "To,
> Assistant Commissioner,
> Central Excise & Service Tax,
> R.K. Puram(Main) -110066"

5. It has, therefore, been submitted by the learned Authorised Representative that the letter was sent to Assistant Commissioner and not to the Tribunal and that too at an incorrect address, and, therefore, it cannot be urged by the Appellant that the Appeal was sent to the Tribunal. Learned Authorised Representative also submitted that if the appeal had been sent by the speed post, than too it was the duty of the Appellant to have enquired about the receipt of the Appeal but no such effort was made nor it has been stated in the Application that the envelope did not return back. He, therefore, submits that no good cause has been shown by the Appellant for condoning the delay in filing the Appeal and the delay condonation application should be rejected.

6. We have considered the submissions advanced by the learned Counsel of the Appellant as also the learned Authorised Representative of the Department.

7. The Appeal has been filed to assail the order dated 15 January, 2015 passed by the Commissioner (Appeals). The

forwarding communication of the Department which was enclosed with order of the Commissioner (Appeals) clearly mentions that an appeal can be filed before the Customs, Excise and Service Tax Appellate Tribunal under Section 86 of the Finance Act 1944. The address of the Tribunal was also mentioned.

8. In such circumstances, when the letter accompanying the order of the Commissioner (Appeals) clearly mentions that an Appeal could be filed before the Customs, Excise and Service Tax Appellate Tribunal at West Block- II, R.K.Puram, New Delhi, the Consultant was not justified in sending the Appeal by speed post to an Assistant Commissioner and that too at an incorrect address. The Consultant cannot be said to be unaware of the procedure.

9. It is also clear that neither the Consultant nor the Appellant made any effort to enquire from the Tribunal whether the appeal that is alleged to have been sent by speed post had actually been received in the Tribunal.

10. No attempt was also made by the Appellant or its Counsel to visit the website of the Tribunal to find out the status of the appeal or seek any enquiry from the Tribunal regarding the filing of the appeal. This amply demonstrates the casual manner in which the Appellant proceeded in the matter.

11. The Appellant has also not stated as to on what date the officers of the Department made an attempt to recover the amount because what has been stated in the delay

condonation application, is that the "appeal said to have been filed" before the Tribunal was was not available on CESTAT website". This clearly implies that the Department had earlier informed the Appellant about the recovery proceedings and it is only when the Appellant informed the Department that it had filed an appeal before the Tribunal that efforts were made by Department to find out the status of the appeal. It is, thereafter, that the Department informed the Appellant that the website of the Tribunal did not indicate that the appeal had been filed. What is also important to notice is that the Appellant has not even disclosed as to on what date the letter sent by the Department was received by the Appellant. There is a deliberate attempt on the part of the Appellant to withhold vital information from the Tribunal.

12. The facts stated in the application do not convince us that the Appellant was prevented by sufficient cause from filing the Appeal within the stipulated time. The application filed for condoning the delay is, accordingly, rejected. The appeal, therefore, stands dismissed.

(Dictated and pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(C.L. MAHAR)
MEMBER (TECHNICAL)

ARCHANA