CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 53377 of 2018-SM

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-62-18-19 dated 27.04.2018 passed by the Commissioner (Appeals), Central Goods & Service Tax, Customs & Central Excise, Bhopal)

M/s Century Contractors Private Limited **Appellant**
99, Gayatri Vihar, Thatipur
Gwalior (M.P.)

VERSUS

Commissioner, Central Goods, Service Tax Customs & Central Excise, **Respondent**
178, Bhagya Bhawan, M. P. Nagar, Zone-II
Bhopal (M.P.)

APPEARANCE:

Shri Deepak Kumar Bajpai, C.A. for the appellant
Shri K. Poddar, Authorised Representative for the respondent

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

FINAL ORDER NO. 51248/2019

DATE OF HEARING: 23.05.2019
DATE OF DECISION: 23.05.2019

ANIL CHOUDHARY:

Heard the parties.

2. The issue in this appeal is whether the appeal of the appellant have been correctly dismissed by the Commissioner (Appeals) on the ground of limitation.

3. Brief facts are that the appellant received show cause notice dated 04.04.2013, and in response thereto they appeared for

personal hearing. In the adjudication proceedings they also led evidence in support of the contention that they have used material in execution of work, under the classification of "Commercial and Industrial Construction Service". Further case of the appellant is that, the order-in-original dated 17.11.2014 was not served on them. They made enquiries with the adjudicating authority vide letters dated 24.12.2014, 11.03.2015 and 20.01.2017. Thereafter, they received the communication dated 26.02.2018 from the Range Superintendent, informing that the show cause notice was adjudicated vide Order-in-original dated 17.11.2014, and accordingly they are required to pay the adjudicated dues of Rs.5,51,862/- alongwith equal amount of penalty under Section 78, plus interest. In response thereto they approached the Range office with a letter dated 05.03.2018, stating that so far they have not received Order-in-original, and copy of the same may be provided. The copy of the Order-in-original was accordingly provided by the Range Superintendent on 07.03.2018, which was received by hand. Thereafter, they filed appeal before the Commissioner (Appeals) on 13.03.2018, i.e. within a week's time from the date of receipt of the order-in-original.

4. Learned Commissioner (Appeals) called for a verification report from the Commissionerate and as per the report, which is quoted as follows:

> "3. .... The superintendent (Adjudication) informed that the impugned order dated 17.11.2014 was sent through speed post on their registered premises and the same has not been returned undelivered. The jurisdictional Range Superintendent vide his letter dated 27.10.2016 requested the appellant to pay the service tax demand confirmed vide the impugned order. Another letter was sent on 30.12.2016 by the Range

> Superintendent for payment of Government dues which was further followed by the letter dated 27.09.2017, 06.02.2018 and 26.02.2018. All these letters were sent at the address of the appellant i.e. M/s Century Contractors Pvt. Limited, 99, Gayatri Vihar, Thatipur, Gwalior. However, all such letters have fallen on deaf ears. Under the circumstances, the submission of the appellant that the order was communicated on 07.03.2018 cannot be accepted. The impugned order dated 17.11.2011 was communicated to the appellant in the year 2014 itself followed by several letters for payment of government dues. Thus, the instant appeal which should have been filed within two months from the date of receipt of order has been filed on 13.03.2018, which is much beyond the stipulated period of two months of receipt of the said order by the appellant. Thus, the appeal filed by the appellant is delayed by more than three years."

5. Thus, the learned Commissioner (Appeals) came to the conclusion that there is a delay of about three years in filing the appeal, by assuming that the Order-in-original must have been served within a period of two weeks, on or about 30.11.2014. Accordingly, he dismissed the appeal on the ground of limitation. As Section 85 of the Finance Act, 1994 provided time limit of two months for filing the appeal and further period of one month.

6. Being aggrieved, the appellant is before this Tribunal. Learned Counsel states that the Commissioner (Appeals) have erred firstly not giving any opportunity to the appellant to respond to file objection or the verification report received from the Commissionerate. Secondly, there is no provision to assume the deemed service. Further, the appellant on receipt of the notice of demand in February, 2018, had soon thereafter approached the Range Superintendent and obtained the copy of the order and filed the appeal. Further, in the verification report received by the Commissioner (Appeals) there is no reference of exact date of despatch and the speed post number. Further, no proof of delivery has been stated in the said report. In this view of the matter he prays for appropriate relief.

7. Learned Authorised Representative appearing for the Revenue relies on the impugned order. He further refers to sub-section (2) of Section 37C of the Central Excise Act, 1944 which provides that every decision or order passed, or any summons or notice issued under this Act or the Rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post or courier referred to in sub-section (1) or a copy thereof is affixed in the manner provided in sub-section (1).

8. Thus, there is a rebuttable presumption of deemed service where the order has been despatched by post with appropriate address in the envelop. He further relies on the ruling of Punjab & Haryana High Court in the case of **Commissioner of Central Excise, Ludhiana vs. Mohan Bottling Co. (P) Ltd., - 2010 (255) ELT 321 (P&H)** and also in the case of **Phoenix Plasts Company vs. Commr. of C. Ex. (Appeals), Bangalore – 2013 (298) ELT 481 (Kar.).**

9. Having considered the rival contentions, I find that sub-section (2) of Section 37C which provides that every decision or order passed on any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post or courier referred to in sub-section (1) or a copy thereof is affixed in the manner provided in sub-section (1).

10. Admittedly, there is no service of notice, no affixation and secondly, neither there is proof of delivery of order on record, nor there is reference of the exact despatch details in the verification report quoted in the impugned order. In this view of the matter, the Commissioner have erred in assuming the deemed service of the order-in-original in November/ December, 2014. Accordingly, the appeal is allowed by way of remand to the original Adjudicating Authority and it is held that the appeal before the Commissioner (Appeals) was within time. The Adjudicating Authority is directed to hear the appellant on merit and after examining the evidences led, pass reasoned order in accordance with law. The appellant is also directed to appear before the Adjudicating Authority with their reply to show cause notice, with evidence, and seek opportunity of personal hearing within a period of sixty days on receipt of copy of this order.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant