

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.1

**Excise Appeal No. 78939 of 2018
And
Excise Cross Objection No. 75579 of 2019**

(Arising out of Order-in-Appeal No.177/SLG-CE/2018-19 Dated 18.07.2018 passed by
Commissioner, Siliguri Appeals.)

M/s. Farm Tea & Chemicals Pvt. Ltd.

(Bhutkirhat, Dist.-Jalpaiguri, Pin-735135)

VERSUS

Appellant

**Commissioner of CGST & Central Excise, Siliguri
Commissionerate**

(C. R. Building, Haren Mukherjee Road, Hakimpara, Siliguri-734001)

Respondent

APPEARANCE :

Mr. N. K. Chowdhury, Advocate for the Appellant

Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.75941/2023

Date of Hearing : 03 July 2023

Date of Decision : 03 July 2023

PER R. MURALIDHAR

In this case, the Appeal filed by the Appellant before the Commissioner (Appeals) was dismissed by him on the ground that the Appeal was filed beyond the time limit given for filing such Appeal. It is on record that the OIO was passed on 25/04/2012 against the present Appellant as well as the two directors of the Company. The two Directors have received the OIO on 30/04/2012 and filed their Appeal on time before the Commissioner (Appeals). However, the Appellant claims that the OIO Copy was not received by the Appellant at their factory address i.e. at Bhukhirhat, Dist. Jalpaiguri, West Bengal-735135. Therefore, they were not aware of the passing of the OIO. Subsequently, they received a letter dated 01/06/2013 from the Jalpaiguri Division Superintendent wherein a copy of the OIO was enclosed. In this letter, the Superintendent had demanded the

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confirmed amount of demand against the Appellant. After coming to know that OIO has passed against them, they have filed the Appeal before the Commissioner (Appeals) on 31st July 2013 which is well within the limit of 60 days available to them if the communication of the Order date is taken as 01/06/2013. The Commissioner (Appeals) has given the finding that the other two Directors have received the OIO on 30/04/2012 and have filed their Appeals on time. He has held that the Appellant has not filed the Appeal within the appealable period of 60+30 days. Accordingly, he had dismissed the Appeal on this ground itself.

2. The Learned Advocate submits that the Department has not come out with any proof that the OIO was served on the Appellant at their Jalpaiguri Unit.

3. The Learned AR submits that it is on record that two other Directors have received the OIO copies on 30/4/2012. The Commissioner (Appeals) has ascertained this fact. The concerned Division has clarified that even the OIO pertaining to the Appellant was sent vide Express Parcel Post bearing No. EW855302532IN on 01.05.2012. Further he submits that as the Directors have received the copy of OIO, the Appellant Company cannot take stand that they were not aware of the OIO being passed by the Adjudicating Authority. Accordingly, he submits that the present Appeal is required to be dismissed.

4. Heard both sides and considered the submissions.

5. Admittedly, the OIO was passed against the Appellant as well as against the two Directors of the Appellant. Further, it is not in dispute that the two Directors were served with the OIO on 30/04/2012 as can be seen from the correspondence of the Department Officials. However, it is seen that the Postal Address of these two Directors is Kundu Bhawan, Bidhan Road, Siliguri whereas in respect of the Appellant the address is Bhutkirhat, Dist. Jalpaiguri. It is also seen that while two directors have received the OIOs on 30/04/2012 as per the letter issued

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by the AC, Siliguri Commissionerate, the OIO was dispatched by Speed post to the Jalpaiguri Address of the Appellant. While proof of dispatch of the OIO is produced by the Department, the evidence of having served this OIO to the Appellant is missing. The fact that two directors have received the OIO will not on its own prove that the Department has served this OIO to the Appellant also. If this contention is taken as correct then there will not any necessity to send separate Orders to all the Noticees.

6. Considering these facts, I have come to a conclusion that the Department has not brought out any evidence that the Appellant was served with the OIO in May 2012. In such a case, I have to go by the letter dated 01/06/2013 addressed to the Appellant to their Jalpaiguri address along with a copy of xerox of the OIO as the date on which the Appellant has been served the OIO. Therefore, I allow the Appeal and direct the Commissioner (Appeals) to take up the Appeal on record and decide the issue after following the principle of natural justice.

7. Since the matter pertains to 2012, the Adjudicating Authority is directed to complete the proceedings within four months from the date of receipt of this communication.

8. This Appeal as well as Cross Objection filed by the Department stands disposed of thus.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja