IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

Appeal No. ST/87719/2018

(Arising out of Order-in-Appeal No. SK/GST (Audit-II)/MUM/55/Appeals-III/2018 dated 22.03.2018 passed by Commissioner of CGST & Central Excise (Audit-II), Mumbai)

Sahara India TV Network **Appellant**

Vs.

Commissioner of CGST & CE **Respondent**
Mumbai

Appearance:

Shri Vinod Awtani, C.A. for appellant
Shri S.K. Hatangadi, Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing & Decision : 21.01.2019

FINAL ORDER NO. **A/85327 / 2019**

Per: S.K. Mohanty

This appeal is directed against the impugned order dated 22.03.2018 passed by the Commissioner (Appeals), GST (Audit II), Mumbai, wherein the appeal filed by the appellant was dismissed on the ground that the same was not filed within the stipulated time frame and no application was filed, seeking for condonation of delay in late filing the appeal before the office of the Commissioner (Appeals).

2. Learned Consultant appearing for the appellant submits that the adjudication order was received by the appellant on 11.05.2015 and thereafter, the appeal was filed before the office of the Commissioner (Appeals) on 08.07.2015, which is within time as prescribed under Section 85 of the Finance Act, 1994. However, he contended that the receipt date was mentioned as 11.04.2015, which is not the fact of the case. Thus, he prayed for remanding the matter to be Commissioner (Appeals) for acceptance of the appeal and for a decision on merits.

3. On the other hand, learned D.R. appearing for Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. I have perused the letter dated 01.01.2019, written by the Dy. Commissioner (RTI) Central GST, Mumbai addressed to the Consultant of the appellant, stating that the adjudication order was passed on 26.04.2015. If such letter is taken into consideration, then it can be construed that due to typographical error, the date of receipt of the order was wrongly mentioned as 11.04.2015 inasmuch as there is no question of receipt of the order before hand which at the material time was not in existence. Thus, there is force in the submissions of the appellant that the order was received by it on 11.05.2015 and

within the prescribed time frame, the appeal was preferred before the office of the Commissioner (Appeals). Thus, there was no delay in filing the appeal before the Commissioner (Appeals). Since learned Commissioner (Appeals) has dismissed the appeal only on the ground of limitation, without going into the merits of the case, I am of the opinion that ends of justice will be met, if the matter is remanded to the Commissioner (Appeals) for deciding the appeal on merits based on the available records.

6. Accordingly, after setting aside the impugned order, the matter is remanded to the Commissioner (Appeals) for passing of order on merits of the case. Needless to say that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

7. In the result, appeal is allowed by way of remand to the Commissioner (Appeals).

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

nsk