CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85204 of 2020

(Arising out of Order-in-Original No. SM/248 & 249/APPEALS-II/ME/2019 dated 30.09.2019 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai)

M/s Confirmation.Com India Pvt. Ltd. **.... Appellant**
719, C-Wing, 215, Atrium, Near Courtyard Marriott,
Andheri-Kurla Road, Andheri (E), Mumbai-400093

Versus

Commissioner of CGST & Central Excise, **.... Respondent**
Mumbai East
3rd Floor, CGST Bhavan, Plot No. C-24, Sector-E,
Bandra Kurla Complex, Bandra (E), Mumbai-400051

WITH

Service Tax Appeal No. 85369 of 2020

(Arising out of Order-in-Original No. SM/248 & 249/APPEALS-II/ME/2019 dated 30.09.2019 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai)

M/s Confirmation.Com India Pvt. Ltd. **.... Appellant**
719, C-Wing, 215, Atrium, Near Courtyard Marriott,
Andheri-Kurla Road, Andheri (E), Mumbai-400093

Versus

Commissioner of CGST & Central Excise, **.... Respondent**
Mumbai East
3rd Floor, CGST Bhavan, Plot No. C-24, Sector-E,
Bandra Kurla Complex, Bandra (E), Mumbai-400051

Appearance:

Shri Sunil Ghosh, C.A. for the Appellant

Shri S.B.P. Sinha, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85063-85064/2019

Date of Hearing: 01.02.2024

Date of Decision: 01.02.2024

Per: M.M. Parthiban

The issue in the dispute has been decided in the impugned order dated 30.09.2010, i.e. order passed in an appeal filed before the Commissioner of CGST and Central Excise (Appeals-II), Mumbai only on the basis of time limit in respect of refunds claim filed before the original authority, by holding that the appeal has been filed belatedly beyond the prescribed period of 60 days in terms of Section 85(3A) of Finance Act, 1994. The appellant has submitted that the Order-in-Original issued by the Assistant/Deputy Commissioner has been received by them only on 23.01.2019. Accordingly, they have preferred the appeal before the Commissioner (Appeals) within prescribed period of 60 days i.e. within 57 days of receipt of the original order by them.

2. When the matter was heard, the learned AR representing the Department was specifically asked to state whether there is any evidence of the service of the original order indicating the date of dispatch/receipt of said original order by the appellant, to which the AR could not produce any documents or other evidence.

3. Heard both sides and perused the records of the case.

4. I find that the impugned order dated 30.09.2019 deals with the Order-in-Original No. ME/REF/DC/RY/666-667/2017-18 rejecting the two refund claims filed by the appellant and the same was signed by the Deputy Commissioner (Refund) indicating the date of his signature as 28th February. On the face of the said Order-in-Original at the preamble page in the entry against "the date of order"; and

"the date of issue" nothing has been mentioned. Thus, it could be reasonably presumed that the said Order-in-Original signed on 28.02.2018 and subsequently the same was dispatched to the appellant. I also find that the address of the appellant indicated in the original order and the impugned order of the Commissioner (Appeals) are one and the same. Even though the present address of the appellant is different, there is no case of mistaken address in dispatch of the Order-in-Original. Even in the office copy of the Order-in-Original, there is no indication of the said order having been dispatched or any other records of the department or postal authorities to show that the said original order was dispatched and was received by the appellant and the delay in filing the appeal before the Commissioner (Appeals) is factual on account of the failure on the part of the appellant.

5. The learned Advocate appearing for the appellants had relied upon the judgment of the Hon'ble High Court of Madras in the case of *G. Muthukumar Vs. CESTAT, Chennai reported in (2015) 55 Taxmann.com 525 (Madras),* to support his contention that in the absence of any evidence of receipt of the communication from the Department on specific date, the claim of delayed receipt by the respondent was accepted and the delay was condoned.

6. In the present case before me, when the merits of the case have not been discussed and the impugned order had only decided the issue of time limit in submission of appeal, I feel that the case needs to be examined in a narrow compass as to whether the appeal has been filed in time as per Section 85(3A) of the Finance Act, 1994. On factual matrix of the case, there is no specific date mentioned

either in the face of the order or the date of the order in the preamble. Further, there is no evidence on record before me to state that the appellant had received the original order in time and there was delay in filing the appeal beyond the prescribed 60 days time. In the absence of any evidence or documents produced by the Department for dispatch of the original order and its receipt by the appellant; or by any independent evidence, such as records of the postal authorities to support the same, I am unable to accept the stand taken in the impugned order that the original order was sent in time and the delay in filing appeal is on account of the appellant. In the above circumstances, the claim made by the appellant that they had received the original order on 26.11.2018 appears to be acceptable particularly in view of the judgment of the Hon'ble High Court of Madras in the case of *G. Muthukumar (supra).* By taking note of the claim of the appellant that the said original order was received on 26.11.2018, I find that the appeal before the Commissioner (Appeals) had been filed on 23.01.2019 i.e. within 57 days. Thus, appeal filed by the appellant is eligible to be considered under Section 85(3A) of the Finance Act, 1994.

7. In view of the above discussions, the impugned order dated 30.09.2019 is set aside and the appeal is allowed by of remand to the Commissioner (Appeals) for fresh decision on merits.

(Order pronounced and dictated in open court)

(M.M. Parthiban)
Member (Technical)

Sinha