CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 87779 of 2023

[Arising out of Order-in-Appeal No. SK/259/Appeals-II/MC/2023-24 dated 25.09.2023 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.]

M/s Aim Infocom Services Pvt. Ltd. ....Appellant
12/B, 1st Floor, Mehta Chambers,
Kalyan Street, Masjid Bunder (East),
Mumbai – 400 009

VERSUS

Commissioner of CGST & Central Excise, Mumbai Central ....Respondent
4th Floor, Central Excise Building,
Churchgate, Mumbai – 400 020

APPERANCE:

Shri Narayan Bijur, Advocate for the Appellant
Shri S.B.P. Sinha, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 85273/2026

Date of Hearing: 06.02.2026
Date of Decision: 06.02.2026

Appeal is heard from both the sides and taken up for order.

2. Learned Counsel for the Appellant submits that they have changed their address in the portal of GST as well as Income Tax portal on 01.04.2019 as they had relocated themselves during that period but show-cause notice dated 29.12.2020, Order-in-Original dated 22.02.2021 were all sent to the Appellant's old address, for which, it was not in receipt of those and could not even know about existence

of a tax demand against it and apparently, if any, hearing notice was sent that might have been sent in the same old address but only the recovery notice dated 15.11.2022 was sent to the Appellant's present address, from which it came to know about existence of the appeal and sought for necessary documents from the Department including copy of show-cause notice and copy of Order-in-Original which were stated to have been delivered to him on 21.11.2022. He further submits that as they were preparing the appeal paper book and getting ready to file the same before the Commissioner (Appeals), a tragedy occurred in the house of the Appellant's Consultant that relates to sickness of Consultant's mother-in-law who was hospitalised and died subsequent there to on 16.01.2023, for which the Consultant had to travel to his in law's house to join in the death rituals, that had occasioned delay in filing the appeal only for 29 days, beyond the 60 days available for such filing of the appeal, but taking note of the date of order passed, learned Commissioner (Appeals) had given a finding that there was 663 days delay in filing the appeal, which was not condonable at his end.

2.1 To him as per the statutory provision contained in Section 85(3A) of the Finance Act, 1994 it was an irregular order for the reason that such computation of limitation period has to be done from the date of receipt of order and not from the date of passing of the order. He further submits that before the Adjudicating Authority also, Appellant had not participated and could not exercise its right to natural justice to defend its case, for which matter is required to be remanded back to the Original Adjudicating Authority by setting aside the order passed by the Commissioner (Appeals) who had not exercised his discretion in condoning delay of 29 days well available with him. In support of his submission he has drawn attention of this Bench to the exhibits submitted alongwith the appeal paper book namely the change of address effected in the GST portal, the indoor admission of mother-in-law of its learned Consultant, death certificate, train ticket booked under Tatkal showing date of departure from Mumbai on 24.01.2023 and date of arrival of 02.02.2023, after which they were able to file the appeal on 20.02.2023.

3. Learned Authorised Representative objects to such submission on the ground that date of receipt of order by the Appellant is not substantiated through documentary proof, though a date stamp is affixed to the said order that indicates the date of receipt of the said order by the Department was on 21.11.2022. He further submits that there is wrong noting of date in the death certificate submitted by the Appellant and also stated on record that those documentary proof were not furnished before the Commissioner (Appeals), since not recorded in his order.

4. I have gone through the appeal paper book and taken note of the submissions. As could be observed, the submissions made on behalf of Appellant concerning dispatch of show-cause notice as well as Order-in-Original was admittedly in its old address as could reveal from the issue column of the order and the recovery notice was sent in the present address but surprisingly the Order-in-Appeal was again despatched to the old address, which appears to be irregularity on the part of the Department in not taking due diligence in properly serving the notices, order, etc. Further, going by the submission of learned Counsel for the Appellant since demand notice is dated 15.11.2022 and Appellant claims to have received the order thereafter on his personal request, it can't be considered to be an erroneous submission when he asserts the date of receipt to be of 21.11.2022. Concerning erroneous noting of year as 2022 in the death certificate of the Consultant's mother-in-law, it can be considered as typographical error since it is noted in the Hospital discharge document as 16.01.2023 and death certificate was issued on 21.11.2022, that has been further established with supporting travel documents etc.

4.1 Section 85(3)(A) of the Finance Act, 1994 clearly stipulates that period of 60 days which is further condonable by another 30 days is to be computed from the date of receipt of the order. I am of the considered view that Appellant had filed the appeal within the condonable period available with the Commissioner (Appeals) alongwith a condonation petition for such condonation of delay but that was not considered by holding that there was delay of 663 days in filing the appeal, which appears to be quite improper and contrary to the provision available for filing of such appeal. I am, therefore, inclined to set aside the said order.

5. As reveals from Order-in-Original, Appellant had not participated even during the adjudication proceeding, as it was not in received of the show-cause notice and not aware of the existence of such proceeding before it. Therefore, to ensure natural justice to the Appellant to defend its own case, it would be appropriate to remand the matter back to the Adjudicating Authority for a *de novo* adjudication after condoning the delay of 29 days in filing the appeal before the Commissioner (Appeals) here, at this end in exercise of the Appellate jurisdiction of this Tribunal. Hence the order.

The Order

6. The appeal is allowed by way of remand to the Original Adjudicating Authority for a *de novo* adjudication with due notice to the parties after condoning delay of 29 days in filing the appeal before the Commissioner (Appeals) at this end in exercise of Appellate power vested with this Tribunal and for that purpose, the order passed since not sustainable in both law and facts, by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai *vide* Order-in-Appeal No. SK/259/Appeals-II/MC/2023-24 dated 25.09.2023 is hereby set aside.

(Dictated & pronounced in the open Court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad