(2021) 11 CESTAT CK 0078

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 60305 Of 2021

Prakash Webtech Pvt.Ltd. APPELLANT

Vs

Commissioner Of CGST, Faridabad RESPONDENT

Date of Decision : 23-11-2021

Acts Referred:

Citation : (2021) 11 CESTAT CK 0078

Hon'ble Judges : Ashok Jindal, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. The appellant is in appeal against the impugned order wherein the Commissioner (Appeals) has dismissed the appeal as time barred.

2. The brief facts of the case are that adjudication order dated 31.03.2016 was sent to the appellant through speed post but there is no proof of service

available on record whether the adjudication order delivered or not? Further, recovery notices were sent to the appellant in 2017 itself but the appellant

approached to the department for supply of adjudication order earlier in 2019. Thereafter, the appellant filed appeal before the Commissioner

(Appeals), who dismissed the appeal as time barred.

3. The Ld. Counsel for the appellant submits that the appellant has not received the adjudication order in 2019 wrote to the department to provide copy

of adjudication order and on receipt of adjudication order, the appellant filed appeal before the Commissioner (Appeals). Therefore, the impugned

order is to be set aside.

4. On the other hand, ld.AR strongly objected that it is fact on record that in 2017 recovery notices were sent to the appellant but the appellant did not

take notice. In that circumstance, the appeal of the appellant has rightly been rejected as time barred.

5. Heard the parties and considered the submissions.

6. I find that to file appeal before the Commissioner (Appeals), the adjudication order is required to be delivered to the assessee and on receipt of the

adjudication order, the assessee has to file appeal within 60 days of receipt of said order, the said period can be extended for another 30 days if the

reasons explained by the assessee are found satisfactory. Admittedly, in this case, there is no proof of service of adjudication order on the appellant.

In that circumstance, the date on which the appellant has received the adjudication order is the date of receipt of adjudication order i.e. 10.12.2020 and

thereafter they filed appeal before the Commissioner (Appeals) on 15.2.2021. In that circumstance, I hold that the appellant has filed appeal before

the Commissioner (Appeals) in time, the impugned order deserves no merit and accordingly the same is set aside.

7. I also find that the Commissioner (Appeals) has not dealt with merits of the case, therefore, the matter is remanded back to the Commissioner

(Appeals) to decide the issue on merits within 60 days of receipt of this order after affording a reasonable opportunity of hearing to the appellant.

8. The appeal is disposed of by way of remand.

(dictated &Pronounced in the open Court)