

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

**SERVICE TAX Appeal No. 10509 of 2023-DB**

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-001-14-2023-24 dated 18.04.2023 passed by Commissioner of Central Excise, ST, CGST, Vadodara-I]

**Shree Developers**

14, Vihang Trade Centre, Mota Bazar Vallabha,  
Vidhyanagar, Kheda, Gujarat-387411

**.... Appellant**

*VERSUS*

**Commissioner CGST & Central Excise, Vadodara .... Respondent**

Central GST Building, Race Course Circle Vadodara,  
Gujarat- 390007

**APPEARANCE :**

Shri Jigar Shah, Advocate for the Appellant

Shri P. Ganesan, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)  
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING :21.08.2023

DATE OF DECISION:05.09.2023

**FINAL ORDER NO. 11881/2023**

**RAMESH NAIR :**

This appeal is directed against order-in-appeal No. VAD-EXCUS-001-14-2023-24 dated 18.04.2023 whereby the learned Commissioner (Appeals) has rejected the appeal as time-barred on the ground that the order-in-original was received by authorised representative of the appellant on 02.11.2018 and the appeal was required to be filed within two months from 02.11.2018 i.e. by 01.01.2019 but the appeal was filed on 19.09.2022. Accordingly, the delay is more than three years and the same is time-barred. Learned Commissioner (Appeals) also contended that since the service of order was made to authorised representative it is proper and legal service of order in terms of Section 37C therefore, the date of receipt of order by the authorised representative is to be taken as date of communication of the order. Being aggrieved by the impugned order-in-appeal the appellant filed the present appeal.

2. Shri Jigar Shah, learned Counsel appearing on behalf of the appellant submits that though the order was served to authorised representative

however, the authorised representative is not an authorised agent of the appellant therefore the service of the order to the authorised representative is not in consonance with Section 37C of Central Excise Act, 1944. He further submits that the authorised representative was appointed for a limited purpose to deal with legal matter of the case and not authorised to receive the order passed by the Adjudicating Authority. He submits that order was never served upon the appellant until 22.07.2022 when the recovery proceedings were initiated against the appellant. Thereafter upon the request of the appellant to provide copy of the order in respect of which recovery proceedings initiated, the appellant received copy of order-in-original dated 30.10.2018 on 22.07.2022. The appeal was filed on 19.09.2022 which is well within the limitation period of two months from the date of receipt of the order as prescribed under Section 85 (3A) of Finance Act, 1994. In support of his submission, he placed reliance on the following judgments:-

- (a) Saral Wire Craft Pvt. Limited vs. CCE - 2017 (50) STR 237 (SC)
- (b) Shridhar Construction vs. CST - 2023 (2) TMI 233
- (c) R.B. Industries vs. CCE, Delhi - 2014 (313) E.L.T. 599 (Tri. Del.)
- (d) R.K. Agarwal vs. CESTAT, New Delhi - 2008 (221) ELT 486
- (e) NandaramHuntaram vs. CIT - 1959 (1) TMI 33 - ORISSA HIGH COURT

3. Shri P. Ganesan, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the record. We find that the statutory provisions for service of order is provided in Section 37C of Central Excise Act, 1944 which is applicable in service tax matters also, the same is reproduced below:-

**Service of decisions, orders, summons, etc.**

**37C.** (1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served, -

- (a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due [or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted

under the Central Boards of Revenue Act, 1963 (54 of 1963)] to the person for whom it is intended or his authorised agent, if any;

(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

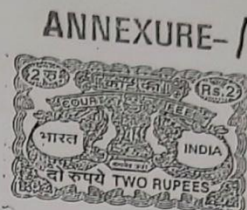
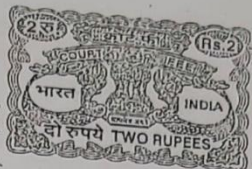
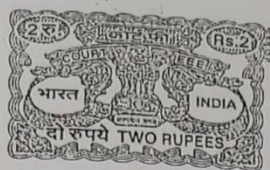
(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post [or courier referred to in sub-section (1)] or a copy thereof is affixed in the manner provided in sub-section (1).]

From the above Section it is clear that the service of the order shall be legal and proper only if it is served to the person for whom it is intended or authorised agent, if any.

5. In the present case, it is the contention of the learned Commissioner (Appeals) that the service of the order to the authorised representative of the appellant is in consonance with Section 37C. Firstly, the authorised representative in the present case is authorised only to deal with cases pending for adjudication before the Adjudicating Authority. After the adjudication, the order must be served to the person for whom it is intended for. It is admitted fact that the adjudication order was not served to the appellant however the same was served to the authorised representative. The authority letter given to the authorised representative is reproduced below:-

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ANNEXURE-19

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**BEFORE THE ASSISTANT COMMISSIONER OF SERVICE TAX / CENTRAL EXCISE**

**Sub: Proceedings in F.No.V.ST/15-02/Shree Dev./Prev/SCN/17, dated. 24<sup>th</sup> April 2017**  
**issued to M/s. Shree Developers**

I/We, M/s. Shree Developers hereby authorize and appoint M/s Kamleshkumar & Associates Chartered Accountants and qualified staff who are authorized to act as authorized representative under the relevant provisions of the law, to do all or any of the following acts:

1. To act, appear and plead in the above noted proceedings before the above authorities or any other authorities before whom the same may be posted or heard and to file and take back documents.
2. To sign, file verify and present pleadings, applications, appeals, cross-objections, revision, restoration, withdrawal and compromise applications, replies, objections and affidavits etc., as may be deemed necessary or proper in the above proceedings from time to time.
3. To Sub-delegate all or any of the aforesaid powers to any other representative and I/We do hereby agree to ratify and confirm acts done by our above authorized representative or his substitute in the matter as my/our own acts, as if done by me/us for all intents and purposes.

This authorization will remain in force till it is duly revoked by me/us.

This authorisation is executed this on 25th day of April 2017 at V.VNagar.

**For M/s Shree Developers**

**Pritesh H Patel**  
 (Proprietor)

**SHREE DEVELOPERS**

PROPRIETOR

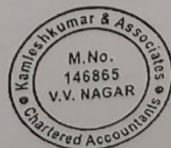
**ACCEPTANCE**

I, the undersigned CA Kamleshkumar A Parmar being proprietor of M/s Kamleshkumar & Associates Chartered Accountants do hereby declare that the said M/s Kamleshkumar & Associates is a registered proprietary firm of Chartered Accountants and Chartered Accountants holding certificates of practice and duly qualified to represent in above said proceedings under section 35Q(2) of Central Excise Act, 1944 as applicable to Service Tax Law under section 83 of Finance Act 1994. We accept the above said appointment on behalf of M/s. Shree Developers. The firm will represent through any one or more of its associates or staff members who are qualified to represent before the above authorities.

**For M/s Kamleshkumar & Associates**  
**Chartered Accountants**

**FRN : 134750W**

**CA Kamleshkumar A Parmar**  
 (Proprietor)  
**MRN: 146865**



**Date: 25<sup>th</sup> April, 2017**  
**Place : V V Nagar**

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From the plain reading of the above authorization given to M/s. Kamleshkumar & Associates, Chartered Accountant, we find that authority is given for specific acts as prescribed under serial No. 1 to 3. On going through these acts prescribed therein, we find that there is no specific act of receiving the adjudication order in the authorization. The learned

Commissioner (Appeals) construed that the authorised representative who received the order is authorised agent in terms of clause 3 of the authorization letter. From the reading of the said clause 3, we find that the clause 3 is related to the acts prescribed in serial No. 1 and 2 and according to which the authority is not given to the authorised representative for receiving the order. Moreover, as per Section 37C, the order can be served only either to the person for whom it is intended or his authorised agent. In our view, authorised legal representative cannot be equated with an authorised agent of the assessee. For this reason also service of the order to authorised representative i.e. Chartered Accountant dealing with the matter before the Adjudicating Authority is not legal and proper.

6. The judgment relied upon by the learned Counsel support their case. Considering the overall facts of the case, we are of the view that the subsequent service of the order copy to the appellant on 22.07.2022 is the date of communication of the order-in-original to the appellant. Accordingly, the appeal filed on 19.09.2022 is well within the prescribed time limit of two months (60days), therefore, there is no delay in filing the appeal. Accordingly the impugned order is set-aside and the appeal is allowed by way of remand to the Commissioner (Appeals) for passing a fresh order on merits of the case.

*(Pronounced in the open court on 05.09.2023)*

**(Ramesh Nair)**  
**Member (Judicial)**

**(C L Mahar)**  
**Member (Technical)**

KL