

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 60087 of 2023**

[Arising out of Order-in-Appeal No. JNK-Excus-APP-153-22-23 dated 22.11.2022 passed by the Commissioner (Appeals), Jammu]

**M/s Johnsons Controls-Hitachi Air .....Appellant  
Conditioning India Ltd**

Hitach Complex Karan-Kadi Nagar, Mahesana Gujarat-  
382715

*VERSUS*

**Commissioner of CGST & Central Excise .....Respondent  
Jammu & Kashmir**

OB-32-Jammu, Jammu and Kashmir 180012

**APPEARANCE:**

Present for the Appellant: Shri Sachin Sharma, Advocate

Present for the Respondent: Ms. Shivani , Authorized Representative

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 60139 /2023**

DATE OF HEARING: 17.05.2023

DATE OF DECISION: 17.05.2023

**PER S. S. GARG**

The present appeal is directed against the impugned order dated 22.11.2022 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has dismissed the appeal of appellant on limitation without going into the merits of the appeal.

2. Briefly the facts of the case are that the appellant was engaged in manufacture of 'Air Conditioner' falling under Tariff Entry 8415 of

the 1<sup>st</sup> Schedule to Central Excise Tariff Act, 1985. The appellant was claiming benefit of exemption Notification No. 56/2002-CE dated 14.11.2002 w.e.f. 28.04.2005 by availing the facility of refund by way of cash, of duty paid/value addition as prescribed under notification. The appellant filed refund claim of Rs. 12,89,370/- on account of value addition deductions for the period of June, July and September 2014. The range officer vide Order-In-Original dated 25.03.2019 rejected the said refund.

3. Aggrieved by the said order dated 25.03.2019 which was communicated to the appellant on 18.06.2019 and the appellant filed the appeal on 30.07.2019 before the Commissioner (Appeals) who without verifying the records merely relying on the report of the original authority dismissed the appeal vide impugned order on the ground that the appeal has been filed beyond the statutory period of 90 days. Against the said dismissal, the appellant filed the present appeal.

4. Heard both the parties and perused the material records.

5. Ld. Counsel appearing for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the Commissioner (Appeals) has wrongly dismissed the appeal being barred by limitation by merely relying on the report of the original authority that the order dated 25.03.2019 was served upon the appellant on 25.03.2019 itself. He further submitted that the appellant has not disclosed any material facts on the basis of

which the Commissioner (Appeals) has come to this conclusion. The appellant was never served on 25.03.2019 rather a Nodal officer of the appellant has received the copy of order only on 18.06.2019 as the appellant has already closed its unit since long and the said Nodal Officer has sent the copy of the order to the appellant through mail on 22.06.2019 and thereafter the appeal was filed within statutory period which was wrongly dismissed by the Commissioner (Appeals) on limitation. He has filed the affidavit of Jugal Kishore Sharma who was the authorized signatory of the appellant stating on oath that the order dated 25.03.2019 was received by hand on 18.06.2019 and the same was communicated to the company on 22.06.2019 thereafter the appeal was filed within the statutory period as prescribed under Section 35 of Central Excise Act, 1944.

6. On the other hand, the Ld. DR reiterated the findings in the impugned order and submitted that as per the dispatch register the order was dispatched by hand and somebody has put his signature on the dispatch register which show that the order was communicated on the same day by the appellant and the appeal filed before the Commissioner (Appeals) was time barred.

7. After considering the submissions made by both the parties and perusal of the record I find that the respondent has not been able to produce any material conclusively showing that the order dated 25.03.2019 was served on the same day i.e. 25.03.2019 itself. The dispatch register produced by the respondent only shows the dispatch

and there is no material on record showing that the appellant was served the copy of the order on 25.03.2019 itself.

8. Moreover, the authorized representative of the company Jugal Kishore Sharma has filed the affidavit stating that he got the copy of the said order by hand on 18.06.2019 and the same was communicated to the company on 22.06.2019 and thereafter admittedly the appeal was filed within the statutory period of limitation.

9. In view of these circumstances, I am of the considered opinion that the dismissal of the appeal on limitation is not sustainable in law and therefore I set aside the impugned order and remand the case back to the Commissioner (Appeal) with the direction to decide the appeal on merits. Accordingly, the appeal is allowed by way of remand.

(Dictated and pronounced in the open court)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**