IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CENTRAL EXCISE APPEAL NO. 14 OF 2017

Commissioner of Customs, Central
Excise & Service Tax, Nashik-II,
Commissionerate Kendriya Rajaswa
Bhavan Gadkari Chowk, Old Agra Road,
Nashik-422002
(Earlier Commissioner of Customs, Central
Excise & Service Tax, N-5, Town Centre,
CIDCO, Aurangabad) ...Appellant

Versus

M/s. Gade Transport, 2nd Floor,
Hotel Yash Palace, Nagar-Pune Road,
Ahmednagar (M.S.) ...Respondent

Mr.D.S. Ladda, Advocate for the Appellant
Mr.Abhay Kolte, Advocate for Respondent Sole

CORAM : S.V.GANGAPURWALA AND
A.M.DHAVALE, JJ.

DATE: MARCH 28, 2018

PER COURT :

1. Mr.D.S.Ladda, learned counsel for the appellant submits that the Tribunal committed an error in holding that the service by speed post is not proper service. The learned counsel submits that section 37C of the Central Excise Act, 1944 has been misread by the Tribunal. The amendment made

in the year 2013 introducing the service by speed post is clarificatory in nature and has retrospective effect.

2. Mr. Ladda, learned counsel relies on the judgment of the Orisa High Court in case of ***Jay Balajiyoti Steels Ltd. Vs. Cestat, Kolkatta*** reported in ***2015 (37)STR 673 Ori)***

3. Mr. Kolte, learned counsel relies on the judgment of Division Bench of this Court in case of ***Amidev Agro Care Pvt. Ltd. Vs. Union of India*** reported in ***2012 (279) ELT 353 (Bom.).***

4. The order of the Tribunal assailed in the present appeal is of the year 2014. The judgment in case of *Amidev* has been relied by the respondent. By way of amendment in the year 2013 to section 37C, now there is no dispute of service by speed post and it would be proper service.

5. Tribunal has observed that the order in original was not received by assessee and must have been received by someone else. It is on this premise the Tribunal has passed the order. The matter is remitted to the Commissioner to decide it on its own merits. More than three years have lapsed.

6. Considering the finding of fact arrived at, and that there is nothing on record to show that order sent by speed post was received by the assessee himself. No case for interference.

7. The appeal stands dismissed. No costs.

(A.M. DHAVALE, J.) **(S.V. GANGAPURWALA, J.)**

Adhane