

Anchor Engineering Works Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-13-2000

Reported in : (2001)(130)ELT671TriDel

Appellant : Anchor Engineering Works

Respondent : Commissioner of C. Ex.

Judgement :

1. The captioned appeal is against the Order-in-Appeal No.68/CE/CHD/99, dated 15-01-1999 passed by the Commissioner (Appeals).

The appellants had received the order on 27-1-1999. Under a bona fide belief that a remedy against the said order was a revision application to the Central Government, the appellants filed such an application to the Government. Government found that they had no jurisdiction to entertain such an application in the matter and therefore passed Order No. 73/99, dated 27-8-1999 advising the party to file appeal against the order of the Commissioner (Appeal's) before the CEGAT. Subsequently, the appellants filed the present appeal before the Tribunal on 18-11-1999. There is a delay on over six months in the filing of the appeal. The present application (E/COD/320/99) is for condonation of this delay. The applicants have requested in writing for allowing the COD application and, in support thereof, they have brought on record a copy of Government's Order No. 73/99, dated 27-08-1999. It appears from their letter sent in reply to the notice of hearing that they want the COD application to be disposed of without the requirement of personal hearing.

2. I have carefully examined the COD application and the Government's order produced in support of the application. I have also heard Id. JDR Shri Ravinder Babu for the respondents.

3. The fact that the applicants, on receipt of the impugned order, approached the Government with a revision application, which ended up with the aforesaid Government Order advising the party to approach this Tribunal in appeal, stands proved. The only ground raised in support of the present application is that they were under a bona fide belief that the appropriate remedy against the order of the Commissioner (Appeals) was a revision application to Government. This ground is, per se, unacceptable inasmuch as it had been stated in unambiguous terms in the preamble to the said order that any party aggrieved by the order could prefer appeal to this Tribunal under Section 35B of the Central Excise Act, 1944. Nevertheless, it is a different question as to whether the preamble itself is a part of the order. Without going into this question, I am inclined to allow the COD application in the interest of justice, having regard to the fact that there is no long delay in the filing of the appeal and that the applicants were spending the period of this delay for pursuing a wrong remedy against the impugned order as evidenced by records. The ends of justice require the delay to be condoned. Accordingly, the COD application is allowed and the Registry is directed to post the stay application to 16-8-2000 and issue notice to the party along with a certified copy of this order.

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