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Press-n-tech Electricals Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-23-2001

Reported in : (2001)(135)ELT782Tri(Mum.)bai

Appellant : Press-n-tech Electricals

Respondent : Commissioner of Central Excise,

Judgement :

1. Application is for condonation of delay of three months in filing the appeal.

2. Counsel for the applicant states that the order dated 6.4.2000 was despatched to the applicant's factory and was received by the watchman.

However, one of the directors of the Company was abroad between January and June, 2000. After his return he came to know, from a telephone call from the department, of the passing of the order and therefore had the order collected from the factory. The applicant had in any case paid the duty in 1998 before the issue of show cause notice. The only issue is the penalties imposed on the company. (Although penalty was also imposed on Girish Shah, the Director no appeal has been filed).

Therefore, on merits the applicant has a good case.

3. The departmental representative points out that there is no evidence of intimation of closure of the factory to the department. That the Commissioner's order indicates that personal hearing was fixed on 21.2.2000 which means that

despite the closure of the factory notice of hearing had been received and acted upon and there is no reason why the order could not have been receive. The balance sheet shows purchases during the year of material valued at Rs. 24.5 lakhs approximately, payment of salary and bonus more than Rs. 2 lakhs, showing activity by the appellant and therefore thus shows that in the absence of one director activities was going on.

4. We note these submissions of the departmental representative. The Commissioner (Appeals) order records the date of personal hearing, although to be fair, he does not specifically record the presence of any person on behalf of the Company. There was considerable activity by the applicant during the year, although not relating to manufacture.

Purchase of considerable amount of stock, payment of salary and taxes, indicates this. The address for service given to the Commissioner was that of the factory and there is nothing to show that the department was informed that the order should be sent to any other address. In this situation, we are unable to accept that, despite the exercise of due diligence, the applicant could not file the appeal within the prescribed period.

5. We therefore unable to condone the delay and dismiss the application. The appeal is accordingly dismissed as barred by limitation.

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