

Manali Petrochemicals Ltd. Vs. C.C.E.

Manali Petrochemicals Ltd. Vs. C.C.E.

SooperKanoon Citation : sooperkanoon.com/22118

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Apr-12-2001

Reported in : (2001)(75)ECC872

Judge : S Peeran, R K Jeet

Appellant : Manali Petrochemicals Ltd.

Respondent : C.C.E.

Judgement :

1. The present miscellaneous application has been filed for early hearing of the appeal as the issue involved lies in a short compass and the prayer is also for remand of the matter for de novo consideration.
2. After hearing both sides in the matter, we are satisfied that the issue lies in a very short compass and the appeal can be disposed of today. Hence the miscellaneous application is allowed and the appeal is taken up for disposal.
3. By the impugned order the Commissioner (Appeals) has rejected the appellants' appeal solely on the ground that the appeal had been filed belatedly by 10 days. The appellants are represented by Shri Nasser Abdulla, learned Counsel. The Learned Counsel has personally filed an Affidavit explaining about his ill-health and on that ground the appeal could not be filed in time and there was only a marginal delay of 10 days in filing the same. He had also explained that his father was seriously ill and he passed away subsequently. Due to the trauma he was

faced with and on account of his own illness, there was a marginal delay in filing the appeal. However, the Commissioner (Appeals) was not satisfied with the reasons given and did not accept the delay and dismissed the appeal. The learned Counsel is personally present in the Court and submits that because of the predicament in which he was placed, this marginal delay was caused. He submits that these grounds are required to be considered as sufficient ground for condoning the marginal delay. He also submits that there are a large number of judgments of the Apex Court where marginal delay has been condoned and he cited the judgment of the Supreme Court in the case of Collector of Land Acquisition, Anantnag v. Mst Katiji which lays down the salient features for condoning delay and the Apex Court has held that appeals should not be dismissed where the delay is marginal as the assessee will not gain by filing appeal belatedly. The plea of illness of the Counsel for the party was accepted as sufficient ground for the delay in filing the appeal and the delay was condoned by the Allahabad High Court in the case of Eureka Forbes Ltd. v. UOI and the Commissioner (Appeals)' quashed by the High Court. The High Court extensively quoted the judgment of the Hon'ble Supreme Court judgment in the case of Collector, Land Acquisition, (supra). He submits that the delay in the present case was not intentional and the party should not be blamed for the delay in filing the appeal on account of the illness of the Advocate. Since sufficient cause has been shown for the marginal delay in filing appeal, he prays for setting aside the order and remand of the matter for de novo consideration on merits.

4. Heard Shri S. Kannan, learned DR who reiterates the finding given by the Commissioner (Appeals).

5. On consideration of the submissions made, we notice that the reasons given by the Commissioner (Appeals) are not sufficient to reject the appeal in the light of the judgment of the Hon'ble Supreme Court in the case of Collector, Land Acquisition (supra). Further, the Allahabad High Court in the case cited supra has also dealt with a case where there was delay in filing the appeal on account of the Advocate's illness and the High Court has accepted the illness of the Advocate as sufficient reason for condoning the delay. In the present case, the Counsel was faced with trauma on account of the death of his father and the Counsel himself

was ill. There was marginal delay of only ten days in filing the appeal. This marginal delay could have been condoned by the Commissioner (Appeals) by exercising his discretionary power to condone the delay, which the Legislature has given him to condone the delay up to three months beyond the initial period of three months and refusal to do so has resulted in failure of justice in the present case. In this view of the matter, the marginal delay in filing the appeal before the Commissioner (Appeals) is condoned and the matter is remanded to the Commissioner (Appeals) to decide the issue on merits after granting opportunity of hearing to the appellants.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com