

Collector of Central Excise Vs. Rama Krishna Steel Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-03-1985

Reported in : (1985)(5)LC1796Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Rama Krishna Steel Industries

Judgement :

1. Shri Verma has put in an application dated 14th March, 1985 signed by Shri N. Devaraju, Deputy Collector (Tech) praying for condonation of delay in filing appeal beyond three months. The delay in filing the appeal is of 9 days and this is admitted by both the parties.

2. In the application the reasons for delay are stated to be that the Memo of appeal addressed to the Registrar of the Appellate Tribunal was despatched by the Despatch Section' to the Senior Departmental Representative, Customs, Excise and Gold Control Appellate Tribunal and that delay was in the office of SDR who presented the appeal to the Registrar after expiry of three months. The application avers that the appeal was despatched in time on 17-8-1984 well within the time limit.

The application goes on to say that the Special Bench B of the Tribunal had acknowledged receipt of this letter in their letter dated 18-9-1984 and it also passed orders on Stay application and had even granted early hearing. All this would show that delay had already been condoned and appeal admitted and the

plea of the respondents that appeal was filed beyond three months is not tenable at this stage.

3. We have heard Shri H.L. Verma, JDR, in support of the application and Shri D.N. Kohli, Consultant for the respondent non-applicant in opposition.

4. The Tribunal cannot draw a line between the SDR and the Appellant Collector of Central Excise, Coimbatore. So far as the Tribunal is concerned they are one and the same agency. Delay on the part of SDR is delay on the part of the Collector of Central Excise. No Affidavit has been filed to explain the delay in filing the appeal. It is also not shown that the office of the SDR was diligent in taking steps for filing the appeal before the proper authority after it was received by them or if no steps were taken in that direction, the reasons for failure to do so. It is well settled that in such matters each day of delay has to be satisfactorily explained. That is absolutely lacking in this case.

5. As the orders were being dictated Shri Verma rose and submitted that the delay was due to the concerned Clerk not bringing this appeal to the notice of the senior officer. As already stated, no affidavit in support of the application has been filed and in absence of an affidavit either of the clerk or of the SDR a verbal submission like this could not support the appellants.

6. As to the contention made in the application that the delay had already been condoned and appeal admitted and that the Assistant Registrar of the Bench had communicated receipt of the appeal, we do not think that the ministerial act of acknowledging the receipt of memo of appeal could amount to admission of the appeal which admittedly is time-barred. No specific order condoning delay in filing appeal has been passed. This contention, therefore, cannot be accepted.

7. From the foregoing we conclude that the appellants have failed, to make out a case for condonation of delay. The application dated 14-3-1985 for condonation of delay and presented to us today is rejected. As a consequence, the appeal is dismissed as barred by time.

Shri D.N. Kohli does not pursue his cross-objection. This is also dismissed as withdrawn.

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