themis Agencies Vs. Commissioner of Central Excise

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SooperKanoon Citation : sooperkanoon.com/23367

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-25-2001

Appellant : themis Agencies

Respondent : Commissioner of Central Excise

Judgement :

1. The application is for condonation of delay of 146 days in filing of this appeal.

2. However, on considering the matter it turns out that the question of any delay in filing this appeal does not arise for the following reasons.

3. This appeal and an earlier appeal No. E/3950/99 form the same appellant are against a common order dated 30.8.1999 of the Commissioner (Appeals) disposing of two appeals before him.

Representative of the applicant contends that one of the appeals before the Commissioner (Appeals) was against the order of the Assistant Commissioner adjudicating on a show cause notice issued to the assessee denying modvat credit. The other appeal was against the order of the Assistant Commissioner dismissing the claim for refund of modvat credit. By mistake, a common appeal had been filed against this order of the Commissioner (Appeals) instead of filing two appeals, one relating to the demand and the other relating to refund.

4. However, on verification this is not found to be the case. This appeal presently before me is identically worded except for such matters as the date of signing of

the appeal, verification, etc., as the earlier appeal. Both of the appeals refer in the statement of facts the show cause notice demanding duty of Rs. 4,59,410/-. There is not a word in both appeals relating to any refund. The entire statement of facts and therefore the grounds of appeal refer only of that show cause notice. Therefore this appeal is merely a repetition of the earlier appeal No. E/3950/99 being field once again. The contention of the representative of the applicant that there was an intention to file an appeal against the order of the Commissioner (Appeals) relating to the refund claim in this context is meaningless. The Tribunal, like any other forum, is not concerned with intention but the documents that have been filed before it and what is evident form the documents before it and not what are the intentions. Permission to make proper changes in the appeal, asked by the representative, in effect amounts to substituting another appeal for the present appeal and hence obviously cannot be granted.

5. In the result the appeal before me to be returned to the appellant on the ground an identical appeal has already been filed. The stay application also should therefore be returned to the appellants.