

Cc Vs. Lml Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-21-2001

Reported in : (2002)(100)LC503Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Cc

Respondent : Lml Ltd.

Judgement :

1. The delay of 83 days in preferring the above appeal by the Revenue is condoned as the delay has been satisfactorily explained as due to mix up of files and transfer of 4 concerned Appraisers at the relevant time.

2. We now take up the stay application. We find that the Commissioner (Appeals) in the impugned order has accepted the contention of the importers that no show cause notice was issued to them before the adjudication order was passed. Further, on the merits of the matter viz. as to whether the importers and the foreign suppliers are related persons, which were an allegation based upon the fact that there was a collaboration agreement providing for control over the foreign collaborator in areas like payment of royalty, quality control etc., he relied upon the decision of the Apex Court in the case of Union of India v. Mahindra & Mahindra Ltd. 1995 (72) ELT 481 (S.C.). The appeal memorandum filed before the Tribunal in fact has not contested the reliance of the Commissioner (Appeals) on the above cited Supreme Court judgement nor stated anything about the finding that the

principles of natural justice have been violated in as much as no show cause notice was issued before the adjudication. Therefore, we are not satisfied that a prima facie case for stay has been made out and accordingly reject the stay application.

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