Maniyar Plast Vs. Commissioner of Central Excise,

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SooperKanoon Citation : sooperkanoon.com/26825

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-26-2001

Reported in : (2002)(148)ELT693Tri(Mum.)bai

Appellant : Maniyar Plast

Respondent : Commissioner of Central Excise,

Judgement :
1. The appeal filed by the appellant to the Commissioner (Appeals) against the order of the Asst. Commissioner of Central Excise was received in his office 29 days beyond the period of three months specified in Section 35A for filing the appeal. The Commissioner has passed orders holding the appeal to be barred by limitation.

2. The contention of the appellant (who is absent and unrepresented despite notice) in the appeal petition is that the Commissioner had not heard it on the ground contained in the application for condonation of delay. This contention is to be accepted. The Commissioner does not indicate that he had given any notice for hearing. The Commissioner ought to have given the appellant an opportunity to explain the grounds for delay; its perfectly possible that, in the event he would have been convinced that the delay in filing the appeal was beyond the appellant's control and hence condoned the delay.

3. However without expressing any opinion on the merits of the application, we allow the appeal and set aside the impugned order. The Commissioner shall, after

giving the appellant reasonable opportunity of being heard on the application of condonation of the delay, pass order on the application and thereafter on the appeal.