

**D.C.M. Engineering Products Vs. Cce**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Nov-15-2002

**Reported in :** (2003)(85)ECC643

**Judge :** S Kang, a T V.K.

**Appellant :** D.C.M. Engineering Products

**Respondent :** Cce

**Judgement :**

1. M/s. D.C.M. Engineering Products have filed an application for condonation of delay in filing the appeal. Shri S.C. Kamra, learned Advocate, submitted that the appellants manufacture unmachined iron castings using sand moulds and cores in their foundries; that for the preparation of sand moulds, they prepare resin coated sand by coating the resin on the sand; that the Commissioner under the impugned Order No. 23-28/CE/CHD-II/2001 dated 28.2.2001 confirmed the demand of duty in respect of resin coated sand and directed Asst./Deputy Commissioner to work out the amount of demand and to intimate the same to the appellants within a period of 30 days. The Ld. Advocate further mentioned that on going through the said order, they noted that the Commissioner had inadvertently mentioned market rate instead of taking the assessable value determined by them on the cost construction methods; that accordingly, they brought the mistake to the notice of the Deputy Commissioner who was directed to work out the demand by the Adjudicating Authority; that again under their letter dated 8.9.2001, they requested the Commissioner to rectify the mistake in the Adjudication Order passed by him

since the mistake was apparent from the record and was purely clerical or typographical in nature; that they reminded the Commissioner under their letters dated 25.1.2002 and 19.3.2002 for rectification of the said mistake; that they have received a communication/order dated 18.4.2002 signed by the Superintendent (Adjudication) stating that their request for rectification of mistake had been considered and no further action could be taken as requested by them; that they had filed the present appeal against the said order dated 18.4.2002 which has to be read with Order-in-Original No. 23-28/CE/CHD-II/2001 dated 28.2.2001 and there is no delay on their part in preferring the present appeal. He also mentioned that the letter dated 18.4.2002 is nothing but an order issued by the Commissioner as an Adjudicating Authority in continuation of his earlier Adjudication order dated 28.2.2001; that they had pointed out the mistake to the Deputy Commissioner as well as the jurisdictional Commissioner repeatedly from August 2001 and had the Department taken action in-time, there could have been no delay in filing the appeal against the order dated 28.2.2001. He finally submitted that as they were pursuing the matter with the Commissioner for rectification of mistake crept in the order, there is sufficient cause for filing the appeal late and accordingly, the delay in filing the appeal should be condoned.

2. Opposing the prayer, Shri Atul Dixit, Ld. SDR, submitted that the present appeal has been filed against the Commissioner's Order dated 28.2.2001; that the time limit specified under Section 35B of the Central Excise Act, 1944 for preferring the appeal is three months from the date of communication of the order; that since the appeal has been filed in July 2002, there is abnormal delay which has not been explained sufficiently; that their submission that they were pursuing the matter with the Deputy Commissioner and Commissioner for rectifying the mistake is not sufficient reason on account of which delay can be condoned.

3. We have considered the submissions of both the sides. It is not in dispute that the Adjudication Order was passed by the Commissioner on 28.2.2001 in which the demand of Central Excise duty was confirmed in respect of quantities of resin coated shell sand holding that shell sand produced by them was excisable product. The Commissioner also gave his findings that the duty has to be paid on shell sand at the assessable value of Rs. 3,500 to Rs. 4,400 per M.T. for the

period 1988-89 to 1992-93, Rs. 3,681.34 per M.T. for 1993-94 and Rs. 3,641.42 per M.T. for 1994-95. No appeal has been filed by the appellants against the said order within the time limit specified under Section 35B(3) of the Central Excise Act. If the appellants were aggrieved with the determination of the assessable value of the resin coated sand, the right forum to approach was the Appellate Tribunal and not to enter into correspondence with the Deputy Commissioner or Commissioner. The appellants have not thus advanced sufficient cause for explaining the delay in filing the present appeal. In our view, correspondence with the department on the adjudication order duly passed by the competent authority cannot be a sufficient cause for not filing the appeal with the Appellate Tribunal. The letter dated 18.4.2002 cannot by any stretch of imagination be treated to be an Adjudication Order. We accordingly reject the application for condonation of delay in filing the appeal. Consequently, the appeal also stands dismissed.

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