Arihant Electrical Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-24-2003

Reported in : (2003)(157)ELT712Tri(Mum.)bai

Judge : G Srinivasan

Appellant : Arihant Electrical

Respondent : Commissioner of Central Excise

Judgement :

1. The application for condonation of delay in filing the appeal by 97 days has been made on the ground that the son of the applicant who happens to be one of the partners was suffering from slip disk since long. The medical certificate dated 17-8-2002 states that he was advised rest till cure. I do not see any certificate which states that he has been cured. The impugned order was passed on 31-1-2002 and it was served on the appellant on 7-2-2002. The appeal ought to have been filed on 7-5-2002. The appeal has been filed on 19-8-2002. The medical certificate is dated 17-8-2002. In the medical certificate there is no indication as to when the applicant Kunal Raj Punamia fell ill and when he was cured. The reason for not filing the appeal from 7-5-2002 onwards is not supported by any evidence before me. To be fair, Shri G.C. Biradar, learned Counsel told me that the applicant has been signing some cheques on behalf of the appellant's firm/business. Shri Biradar, pleads very vehemently in a persuasive way that the meritorious claim should not be rejected on the basis of mere technicalities. It does not prevent the appellant to file the appeal in time against one's own interest.

2. I am of the view that each case has to be decided on its own facts.

The applicant has not brought out as to what prevented him from filing the appeal and what steps he has taken in regard to filing of the appeal. Moreover the discretionary jurisdiction has to be exercised by the quasi judicial authority not in a whimsical way but in a fair and logical way. In the interest of justice I do not find the matter in favour of the applicant. I am, therefore, constrained to dismiss the application for excusing delay in filing the appeal. Hence the appeal stands dismissed.