Errand Electronic Inds. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-12-2003

Reported in : (2003)(162)ELT451Tri(Mum.)bai

Judge : P Bajaj

Appellant : Errand Electronic Inds.

Respondent : Commissioner of Central Excise

Judgement :

1. This ROA application has been filed by the appellants seeking restoration of the appeal which was dismissed by the Tribunal vide order dated 24th May, 2002 under Section 35F of the Act. In the application the applicant have offered to make deposit of Rs. 50,000/- but at this stage this offer cannot be accepted as under the law. The above said order of the Tribunal can be recalled only on making compliance with the provisions of Section 35F of the Act. The learned Counsel has however submitted that the appellants be given two months time to comply with the provision of Section 35F of the Act and their ROA application be still kept pending. The Counsel has also referred to the ratio of law laid down by the Hon'ble Gujarat High Court in the case of Hussein Haji Harun v. Union of India - 1995 (77) E.L.T. 803 (Guj.) wherein it has been observed that Tribunal has power to modify the stay order and to consider restoration of the appeal. But such power can be exercised only if the appeal is pending. It is only then the request for modification of the stay order can be considered. When the appeal is not pending before the Tribunal, the question of consideration of the modification of the stay order does

not arise.

Therefore, the ratio of law laid in that case is not attracted to the appellants case. As requested by the learned Counsel, I allow two months time to the appellants for making compliance with the Section 35F and on making the compliance, their ROA application will be considered and the appeal will be heard. To come up on 14-7-2003.