

Jaln Raffia Indus. Ltd. Vs. Commissioner of Central Excise

Jaln Raffia Indus. Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/31148

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-09-2003

Reported in : (2003)(161)ELT752TriDel

Judge : P Bajaj

Appellant : Jaln Raffia Indus. Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. I have gone through the impugned order and, in my view, the stay application as well as appeal both can be decided simultaneously.

2. The facts are not much in dispute. The proceedings were initiated against the appellants on the strength of the show cause notice for having clandestinely removed the excisable goods without payment of duty during the period in dispute i.e. January, 2000. Penalty under Section 11AC and Rule 173Q of the Rules was also proposed in that notice. The adjudicating authority after getting the reply, confirmed the duty demand of Rs. 1,57,610/- with equal amount of penalty under Section 11AC, besides imposing penalty of Rs. 30,000/- under Rule 173Q. A penalty of Rs. 3,000/- was also imposed on Shri Surendra Kumar Singhvi, Director and Shri Dharam Chand Singhvi, General Manager of the appellants' company. This order of the adjudicating authority (Additional Commissioner) dated 26-3-2001 was challenged by the appellants' company and the Director before the Commissioner (Appeals).

The Commissioner (Appeals) had dismissed the appeals under Section 35F of the Act on the ground that they were time-barred.

3. The appellants' company has only come up in appeal against the impugned order.

4. I have heard both sides and gone through the record. The bare perusal of the record shows that there was a delay of 40 days in filing the appeal by the appellants before the Commissioner (Appeals) against the order-in-original. For the condonation of the same, they had submitted medical certificate of Shri Surendra Kumar Singhvi, Director of the appellants' company, who was the in charge of the day-to-day affairs of the company regarding his illness. That certificate has not been accepted by the Commissioner (Appeals). But, in my view, the impugned order of the Commissioner (Appeals) deserves to be reversed.

It remains undisputed that the appellants had already deposited the entire duty amount along with 25% of the penalty imposed under Section 11AC of the Act. That being, so, they obviously did not have any motive for not filing the appeals within time. The delay being of 40 days, which was within the powers of the Commissioner (Appeals) to condone the same, should have been condoned by him, keeping in view the above said facts. The correctness of the medical certificate submitted by the Director of the appellants' company, had not been doubted by the Commissioner (Appeals). His view that there was other Directors also who could file the appeals if Shri Surendra Kumar Singhvi, Director, was ill, and as such there was no sufficient cause for condoning the delay, cannot be accepted, as it does not appeal to the reasons. The illness certificate furnished by Shri Surendra Kumar Singhvi, Director, who was in charge of the day-to-day affairs of the appellants' company, should have been accepted, especially when he had no motive to deliberately commit delay in filing the appeals, when the entire duty amount and 25% of the penalty amount already stands deposited by the company. The prayer of the appellants for condonation of delay in filing the appeals which is of 40 days, in my view, deserves to be allowed and they must be heard on merits. Too much technical view could not be taken and the appellants' company could not be denied of their right to be heard on merits in view of the

facts and circumstances, detailed above.

5. In view of the discussion made above, the impugned order of the Commissioner (Appeals) is set aside and the delay of 40 days in filing the appeals by the appellants' company alone is condoned. The matter is sent back to the Commissioner (Appeals) for hearing the appeal of the appellants' company only on merits. The appeal of the appellants accordingly stands disposed of and so also the stay application.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com