

Prism Cement Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-17-2003

Reported in : (2003)(89)ECC821

Judge : A T V.K., P Chacko

Appellant : Prism Cement Ltd.

Respondent : Cce

Judgement :

1. This is an application by M/s Prism Cement Ltd., for condonation of delay of 317 days in filing the appeal before the Tribunal.

2. Shri A.N. Haksar, learned Sr. Advocate, submitted that the impugned Order-in-Appeal dated 13.2.2002 immediately after receipt was sent to their corporate office situated in Mumbai through its internal courier for seeking opinion of the Legal Solicitors of the Applicant company; that subsequently during an internal audit in the month of December 2002, it was realized that the opinion being sought on the impugned order had not materialized; that on tracking, it was found that the Appellant company's Solicitors had not received the order as the internal courier, Mr. Mahendra Singh, while carrying the consignment including the impugned order, had fallen ill and since then had remained on leave till November 2002; that on querying the internal courier, he brought forth the consignment carrying the impugned order; that it was only then that the opinion of the Solicitors could be sought; that due to inadvertent delay they could not file an appeal within the

scheduled time period. He, further, submitted that the issue involved in the present matter is the eligibility to avail of Modvat Credit of duty paid in respect of HSD oil used in the manufacture of cement; that the, position in law is now settled by the Supreme Court in the case of CCE, Hyderabad v. Associated Cement Co. Ltd., 2003 (85) ECC 736 (SC) : 2003 (151) ELT 12 (SC); that thus the matter on merit is entirely in their favour as the Order passed by the Lower authorities is patently erroneous and illegal; that it would be highly unjust and prejudicial, if their rightful claim is denied on the ground of delay which is neither wanton nor deliberate. He, therefore, requested that the delay in filing the appeal may be condoned.

3. Opposing the prayer Shri A.S. Bedi, learned SDR, submitted that the reasons advanced by the Applicants for delay in filing the appeal before the Tribunal are not sufficient to condone the delay as there is complete negligence on their part in not filing the appeal within time; that on their own admission it appears that they came to know about the non-receipt of the consignment by their corporate office only when the internal audit was conducted. The learned SDR, further, contended that even after coming to know about the non-filing of the appeal in December 2002 the Applicant have taken 4 months for filing the appeal and which has not been explained at all. He, therefore, submitted that the delay does not deserve to be condoned.

4. We have considered the submission of both the sides. As per Sub-section (3) of Section 35B of the Central Excise Act, every appeal shall be filed within 3 months from the date on which the Order sought to be appealed against is communicated to the aggrieved person filing the appeal. Sub-rule (5) empowers the Appellate Tribunal to admit an appeal after expiry of the relevant period referred to in Sub-section (3), if it is satisfied that there was sufficient cause for not presenting it within the period. We agree with the submissions of the learned SDR that the Applicants have not adduced sufficient cause for not presenting the appeal within the time prescribed under Sub-section (3) of Section 35B of the Central Excise Act. There is force in the contention of the learned SDR that after the internal courier fell sick and proceeded on leave the applicants should have inquired about the consignment which he was supposed to deliver at the corporate office, particularly when the courier remained on leave from February to November. We

also observe that even after he returned from leave it appears that no inquiries have been made from him about the consignment as non-filing of appeal could be deducted only by the internal audit in the month of December 2002 Further, even after finding out the fact of not filing the appeal in December 2002 the applicants took their own time and filed the appeal in Tribunal only in April 2003. This further delay has not been explained at all by them except merely saying that, solicitor was consulted. Accordingly the applicants have not adduced sufficient causes for condoning the delay in filing the appeal. We, therefore, dismiss the application and consequently appeal also stands dismissed.

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