

Kumar Industries Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-27-2003

Reported in : (2004)(169)ELT159TriDel

Judge : K Usha, N T C.N.B.

Appellant : Kumar Industries

Respondent : Commissioner of Central Excise

Judgement :

1. When the petitions for stay came up for hearing it was submitted by Id. DR that there is delay in filing the appeal and that there is no application filed by the appellant to condone the de lay. The Order-in-Appeal is dated 30-8-2001 and according to Revenue it was served on the appellant on 1-9-2001. Ld. Dr sought to support the above submission on the basis of a report received from the postal authorities to the effect that the registered cover was served on the appellant on 1-9-2001.

2. Ld. Counsel for the appellant contended that order 30-8-2001 was never served on the appellant as claimed by the Revenue. The appellant's unit is situated at Plot No. A29 whereas in the document, where the acknowledgement is shown, the address is given as Plot No.29. Ld. Counsel further points out that on making enquiries it is found that the signature on record of the postal authorities is not that of the proprietor/owner or any of his employee. Apart from the above, Id.Counsel would submit that in a case where assessee had been contesting the demand

from the very beginning even by filing a writ petition before the Delhi High Court, it would not have omitted to file an appeal before the Tribunal taking the stand that the order was not served.

2. Taking into consideration the above facts submitted on behalf of the appellant and the nature of the documents produced by the Revenue, we find that the contention raised by the appellant cannot be totally rejected. Under these circumstances we take a view in favour of the appellant that there is no delay in filing the appeal as copy of the order was received by the appellant only later. It is also noted that even though order of the Commissioner (Appeals) is dated 30-8-2001, no steps have taken by the authorities to recover the amount due as per order till 2003.

3. As far as merits of the case are concerned, we find that the issue involved is directly covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of Escorts JCB Ltd. v. CCE reported in 2002 (146) E.L.T. 31 and in the case of Prabhat Zarda Factory Ltd. v. CCE reported in 2002 (146) E.L.T. 497. Since the Commissioner has relied on the decision of the Tribunal in the case of Escort JCB Ltd. [2000 (118) E.L.T. 650 (Tri.)] and Prabhat Zarda Factory in order to come to a conclusion against the appellant and since those decisions are no longer good law in the light of the decision of the Hon'ble Supreme Court, the order impugned cannot survive. We are, therefore, inclined to dispose of the appeals itself.

4. The petition for dispensing with the condition for pre-deposit is allowed. We set aside the order impugned and allow the appeals.

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