Techno Engineering and Rubber Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-03-2003

Judge : S T Gowri, K Kumar

Appellant : Techno Engineering and Rubber

Respondent : Commissioner of Central Excise

Judgement :
1. The applicant is absent and unrepresented. No request for adjournment has been received. The matter has once been adjourned before by the applicant.

2. After reading the stay application, memorandum of appeal and other papers and hearing the departmental representative on the stay application, we have decided to take up the appeal itself.

3. The appellant filed an appeal on 1.4.2002 before the Commissioner (Appeals) against the order of the Asst. Commissioner communicated to it on 3.1.2002. Consequent on an amendment on 12.5.2001 Section 35E of the Act required an appeal to be filed before the Commissioner (Appeals) within 60 days of communication of the order the decision impugned in the appeal, empowering the Commissioner (Appeals) to condone a delay of up to 30 days in filing an appeal. In the application for condonation of delay that was filed, the appellant claimed that a delay of 27 days in filing the appeal was caused by consultant who advised him that the period for filing the appeal was three months and not 60 days. The Commissioner has declined to accept this as valid ground for condoning the delay.

He has noted that the preamble to the order of the Asst. Commissioner made if very clear that an appeal against it was required to be filed within 60 days of its communication and there was no acceptable justification for the delay.

He therefore dismissed the appeal as barred by limitation.

4. The same contention is raised before us that the appellant was mislead by the advice of the consultant. It is not possible to accept this contention that Section 35E of the Act was amended as we have noted in May 2001 quite a few months before the appeal was filed that it is reasonable to accept that the amended provision of law would be clear to any competent qualified. The preamble did make the position very clear that appeal period was 60 days. It is therefore difficult in this background if the appellant were misinformed by the consultant as is claimed, some evidence would have to be present in support of the claim. No such evidence is present. There is no evidence of the appellant having consulted any consultant or of any advice having been tendered to it. The name of any consultant is not furnished. In this situation, we think the Commissioner (Appeals) was right in not condoning the delay. It is therefore not permissible for us to go into the merits of the case.