Modern Threads (i) Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-08-2003

Reported in : (2004)(163)ELT435TriDel

Judge : M T K.D.

Appellant : Modern Threads (i) Ltd.

Respondent : Commissioner of Central Excise

Judgement :

2. This is a request for condonation of delay of 77 days in filing the appeal against the order-in-appeal. The ld. Counsel pleads that, the copy of the impugned order was delivered to the Security personnel of the factory which was lying closed. The said copy delivered to the Security personnel, did not reach the authorised personnel of the appellants. On receiving the copy of the impugned order by one Shri O.P. Jain on his visit to factory on 13-9-2003 from the Security personnel the appellants had filed the instant appeal to the Tribunal within ten days therefrom. However, with reference to the initial date of delivery of the order at the factory gate, there is admittedly a delay of 77 days in filing the instant appeal.

3. When the matter was first heard by me on 14-11-03, it was noted that, the Consultant had appeared in the proceedings before the Commissioner (Appeals) and it was possible that, the copy of the order would have also gone to the Consultant and passing of the impugned order could not have been without his knowledge. Responding to this, the ld. Advocate submits that, the Consultant did

appear before the Commissioner (Appeals). But after the hearing, as can be seen from the face of the order the same was apparently not even despatched to him so that he could inform the appellant about its detail.

4. The ld. DR has vehemently argued that, there is a delay in filing this appeal.

5. On considering the submissions of the appellants it is noted that, since the factory was closed in a situation like this, the lack of communication is not uncommon. In fact, the appellants took steps for filing appeal to the CEGAT only after the copy of the impugned order was delivered to Mr. Jain. The ld. Advocate submits that, Shri O.P.Jain visited the factory on 13-9-2003 and only on that day he was handed over the copy of the impugned order-in-appeal. Immediately thereafter, the instant appeal was filed, within 10 days time.

6. Considering the circumstances as noted above, I find that there is a case for condonation of delay as prayed for. Accordingly, the appeal is admitted by condoning the delay. The COD applications is allowed and the stay application is listed for hearing on 5-1-2004.