Praga Tools Ltd. Vs. Commissioner of Customs

Praga Tools Ltd. Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/33382

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-10-2003

Judge : A Wadhwa, A M Moheb

Appellant : Praga Tools Ltd.

Respondent : Commissioner of Customs

Judgement :

1. After hearing the learned advocate appearing for the appellant, we find that vide the impugned order, the Commissioner of Customs (Appeals) has dismissed the appeal filed by the appellant, as barred by limitation inasmuch as the same was filed after a period of seven months and 16 days from the prescribed time limit of three months. She has observed that there is no plausible explanation for late filing of the appeal. 'We find that the larger bench of the Tribunal in the case of Maithan Ceramic Ltd. v. CCE, Jamshedpur 2002 (145) ELT 394 has held that when the appeal is dismissed on the ground of limitation by the Commissioner (Appeals), the order passed by the adjudicating authority does not merge with the appellate order and the Tribunal cannot consider the appeal on merits filed against the said order. The Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to the provisions of the Customs Act. Inasmuch as the law only empowers the Commissioner (Appeals) to condone the delay of three months after the expiry of the normal period of limitation (as it stood at the relevant time), we cannot find fault with the orders of the Commissioner (Appeals).

2. We also take note of the Delhi High Court's order in the case of Raja Mechanical Company Pvt. Ltd. v. CCE 2002 (144) ELT 36 laying down that when the Commissioner (Appeals) could not have condoned the delay in filing the appeal beyond a period of three months, the Tribunal cannot be said to have committed any error of law in upholding the Commissioner (Appeals)'s order.

3. Inasmuch as the Commissioner (Appeals) does not have any jurisdiction to condone the delay beyond the period of three months after the expiry of the normal period of limitation, we do not find any infirmity in the view taken by the Commissioner (Appeals).

4. Accordingly the appeal filed by the appellant is rejected. The stay petition is also gets disposed of.