

**Vardhman Polytex Ltd. Vs. Cce**

**Vardhman Polytex Ltd. Vs. Cce**

**SooperKanoon Citation :** [sooperkanoon.com/33957](http://sooperkanoon.com/33957)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jan-29-2004

**Reported in :** (2004)(94)ECC247

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

**Appellant :** Vardhman Polytex Ltd.

**Respondent :** Cce

**Judgement :**

1. Challenge in this appeal, at the instance of the assessee, is against the order passed by the Commissioner of Central Excise (Appeals) dated 18.6.2003. On going through the above order we find that the Commissioner (Appeals) rejected the appeal of the assessee on the ground of limitation. The order challenged in appeal before the Commissioner (Appeals) was one dated 1.3.2002. The Commissioner has correctly taken the view that the delay of 359 days in filing the appeal is beyond the period which he could condone in accordance with the provisions of contained under section 35 of the Central Excise Act, 1944.

2. Learned Counsel for the appellant contended that the appellant has referred in his Appeal Memo that it is aggrieved by letter dated 13.3.2003 alongwith provisional order dated 1.3.2003 and they are filing appeal against those decisions. We find no merit in this contention of the appellant. In the Appeal Memo the appellant has shown the designation of the officer passed the order and the date of decision of the order as 1.3.2002 which was communicated to the

appellant on 2.3.2002. In the prayer portion also relief sought by the appellant is only against order dated 1.3.2002. Reliance is placed by the appellant on communication dated 13.3.2003 and the provisional order dated 1.3.2002 to support his challenge against the order dated 1.3.2002 to the effect that under the impugned order facility of provisional assessment should have been granted for the period 1.7.2001 to 28.2.2002. As a matter of fact, under the order dated 1.3.2002 the appellant had been granted facility of provisional assessment from that day onwards. Under these circumstances we cannot accept the contention raised by the appellant that its challenge is not against order dated 1.3.2002. The legal position that the Commissioner cannot condone the delay beyond the period prescribed under Section 35C of the Central Excise Act has been settled by number of decisions of this Tribunal as well as High Courts, namely, Raymon Shoe Co. v. CCE, Kanpur, 2003 (151) ELT 551; Shanti Alloys Pvt, Ltd. v. CCE, Hyderabad, 1999 (109) ELT 79 (AP. H.C.) and Raja Mechanical Company Pvt. Ltd. v. CCE, 2002 (82) ECC 607 (Del.): 2002 (144) ELT 36 (Del.HC). In view of the above we find no merit in the appeal. The appeal stands dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**