Manoj Processors Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-17-2004

Reported in : (2004)(173)ELT440Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Manoj Processors

Respondent : Commissioner of Central Excise

Judgement :

1. After hearing both sides, and considering that the delay of 80 days in filing this appeal has been explained only due to sickness of the proprietor, Manoj Agarwal, who has been certified to be suffering from 'infective hepatitis with general debility' and was advised rest from 27-5-2004 by Dr. B.S. Agrawal, M.D. (Registration No G-1009) Consulting Physician, Agrawal Hospital, Surat and considering that in the same appellant's case, a Bench of this Tribunal vide Order No A/688/WZB/2004/CI/ 653/WZB/2004/CI, M/241WZB/2004/C-I, dated 21-4-2004, has found that the delay of 84 days in that case was not called for on the following grounds : "3. We find that the learned JCDR is correct in pointing out that the medical certificate does not inspire confidence as it has been stated therein that Mr. Kishore Ramgopal Agarwal was advised rest during the period above mentioned which does not tally entirely with the claim made in the application for condonation. Secondly, there is an authorised signatory of the proprietor as seen from the documents filed before us viz. certain invoices (which are at pages 32 and 33 of the paper book filed along with the appeal), and therefore it was open to

the proprietor to have directed his authorised signatory to prefer the appeal and file it before the Tribunal within the statutory period of limitation. We are therefore not satisfied that the delay has been explained sufficiently and accordingly dismiss the condonation application. As a result, the stay application is dismissed and also the appeal is dismissed as time-barred." 2. We would also in this case consider that the appellant appears to be procured convenient sickness certificate to explain the delay. There is much force in the submission of the ld. Joint CDR that there was nothing to prevent the appellant from filing this appeal within the time specified. In the facts of this case, we are not convinced that the delay of 80 days have been satisfactorily explained, since the explanation given and the certificate produced are found to be doctored. The delay in filing the appeal is therefore not condoned.

3. Consequently the stay application and appeal are dismissed as barred by limitation.