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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-28-2004

Judge : A M Moheb

Appellant : Rucha Processors Pvt. Ltd. and

Respondent : Commissioner of Central Excise

Judgement :

1. The Stay application arose out of the orders of the Commissioner (Appeals) passed on 06/02/2004 in respect of different appeals filed before him.

2. Stay application No. E/3/1348 and 1349/04 arises out of the order of Commissioner (Appeals) - No. YPP/70-71/CRT/2004 issued on 06/02/04 in which the Commissioner (Appeals) dismissed the appeal as time barred.

He observed that the Order-in-Original against which the appeal was preferred was decided on 04/01/2000 whereas the appeal was preferred on 04/02/2004. He rejected the appellant's plea before him that they received the Order-in-Original only on 25/12/2003. The Commissioner held that the appellants before him received the Order-in-Original on 28/04/2000 itself.

3. The applicants state before me that they have not received the order of the lower original authority on 08/04/2000 but got it on 23/12/2003 when they had written a letter to the Superintendent of Central Excise in charge. No such communication was filed before me. The claim of the appellants that they received

the order in 2003 is not substantiated.

The other plea is that the Commissioner (Appeals) rejected the appeal without granting a personal hearing.

4. This is a case of clandestine removal. The Commissioner (Appeals) dismissed the appeal as time barred. Duty has already been deposited.

The present application is for waiver of pre-deposit of penalty.

6. No prima facie case has been made out of the applicants for waiver of penalty. The applicants have not filed their appeal memorandum before the Commissioner (Appeals). It is not known whether they have asked for personal hearing. In any case, the delay in filing appeal is such that it could not have been condoned by the commissioner (Appeals). I therefore order that the applicant (M/s Rucha Processors) deposit Rs. 54,500/- towards penalty imposed under Rule 173Q of Under Section 11AC within 8 (eight) weeks from the date of receipt of this order and report compliance on 22/12/04. Upon such deposit further deposit of penalty on the company and the penalty imposed on the Managing Director of the Company is waived.

8. The Commissioner (Appeals) rejected the appeal holding that the appeal as time barred. He observed that the Order-in-Original was received by the applicants on 23/08/2002, but filed the appeal against it only on 04/02/04. The appeal is time barred. Same averments in the Stay application Nos. 1348 & 1349/04 were made in these applications as well. The applicants have not made out a strong prima facie case in their favour of full waiver of penalty on M/s Rucha Processors. It is a case of clandestine removal. I therefore, direct the appellant to deposit Rs. 8,000/- towards penalty (Rucha Processors) within 8 (eight) weeks from the receipt of this order and report compliance on 22/12/2004. Upon such deposit further deposit of balance penalty on Rucha Processors is waived and recovery thereof stayed. Pre-deposit of penalty imposed on the Managing Director and temp driver is waived.

10. The Commissioner (Appeals) rejected the appeals as time barred. He found that the Order-in-Original was received by the appellants before him on

23/08/2003, but they preferred the appeal on 04/02/2004. He rejected the appeals on the ground of time bar.

11. No prima fade case for full waiver of pre-deposit of penalty is made out. Pre-deposit of Rs. 35,000/- towards penalty imposed under Rule 173Q is ordered. Upon such deposit by M/s Rucha Processors further deposit of penalties confirmed in the impugned Order waived. Deposit to be made within 8 (eight) weeks from the receipt of this order.

13. The Commissioner (Appeals) dismissed these appeals as time barred.

The Order-in-Original was received by the appellants on 23/08/2002. The appeal before him was preferred on 04/02/2004.

17. No prima facie case for full waiver is made out The appellant, M/s Rucha Processors are directed to deposit Rs. 75,000/- towards penalty imposed under Rule 173Q within 8 (eight) weeks of the receipt of this order. Upon such deposit further deposit of penalties in the impugned order is waived and recovery stayed.

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