

**Mayur Tex Process House Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/38955](http://sooperkanoon.com/38955)

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

**Decided On :** May-04-2005

**Reported in :** (2005)(102)ECC84

**Judge :** S Kang, Vice, A T V.K.

**Appellant :** Mayur Tex Process House

**Respondent :** Cce

**Judgement :**

1. Shri Kamaljeet Singh, Ld. Advocate submitted that the appeal filed by M/s Mayur Tex Process House has been dismissed by the Commissioner (Appeals) on the ground of time limit; that Commissioner (Appeals) has taken the date of despatch as the date of communication to the appellant which is wrong; that the order was received by them only on 15.1.2002 and the appeal has been filed on 6.3.2002 which is within time limit specified under Section 35 of the Central Excise Act. We find force in the submissions of the Ld. Advocate as the Commissioner (Appeals) have taken the date of dispatch on 18.12.2001 for the purpose of computing the limit of filing the appeal. No date, on which the order reached the appellants has been mentioned in the impugned order, therefore we hold that the appeal has been filed within time limit specified under Section 35 of the Central Excise Act.

2. The appellants are independent processors liable to pay duty under Section 3A of the Central Excise Act on the basis of Annual capacity of production. The

Commissioner (Appeals) has determined their duty liability @ 10 lakhs P.M. during the month of November 2000. The appellant did not discharge their duty liability by the due date. The appellants are not disputing their duty liability out of which 5 lakhs stands deposited by them. The Ld. Advocate, therefore, submitted that the only question, which remains to be decided, is imposition of penalty; that the Madras High Court in the case of Beauty Dyers v. UOI, 2002 (52) RLT 635 has held that rules issued under Notification No.42/98 are ultra vires under Section 3A of the Central Excise Act.

Following the said decision, the Tribunal in the case of Shree Sai Prasad Dyg. & Ptg. Mills v. CC & CE, 2003 (56) RLT 100 (CEGAT) has set aside the penalty imposed on the appellant therein for delayed payment of duty. Following the ratio of these decisions, we hold that no penalty is imposable as the rules have been, held to be ultra vires.

The appeal is disposed of in the above terms.

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