Evershine International Vs. C.C.

Evershine International Vs. C.C.

SooperKanoon Citation : sooperkanoon.com/39606

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-06-2005

Reported in : (2005)(192)ELT919TriDel

Judge : S Kang, Vice, N T C.N.B.

Appellant : Evershine International

Respondent : C.C.

Judgement :

1. The appeal and stay petition are in regard to the order of the Commissioner (Appeals) whereunder the Commissioner (Appeals) rejected the appeal filed before him on the ground of limitation.

2. It is being pointed out that that the appeal had been prepared and sent in time by the appellant's advocate office but by mistake, the envelope was addressed to Additional Commissioner of Customs, ICD and not to the Commissioner (Appeals). It is also being pointed out that the office of the Commissioner (Appeals) and the office of the Additional Commissioner are both located in the same building and the appeal was received in a central registry which accepts the main for Commissioner (Appeals) also. The appellant's submission that since the receipts are centralized in the office of the Commissioner, the receiving authority should have placed the appeal before the Commissioner (Appeals). If this had been done, the appeal would be on times. The learned Counsel has also relied on the decision of the hon'ble Kerala High Court in Ruby Rubber Works Limited v. Assistant

Collector of C.Ex. - wherein the High Court took a view that appeal is required to be entertained even if it fell outside the period of limitation, on account of its being addressed wrongly. We read para 9 of the judgment: 9. In view of the peculiar circumstances of this case, and the difficult questions raised relating to jurisdiction, I am of the view that an opportunity should be given to the petitioner to be heard by the appellate authority. Even assuming that the petitioner's appeal was ultimately received by the appellate authority outside the period of limitation. In view of the fact, if the appeal had not been wrongly addressed, it would have in all probability reached the appellate authority well within time. I am of the view that Ext. P3 appeal should be taken back on file by the appellate authority and disposed of on merits.

3. Reliance is also placed on the decision of this Tribunal in the case of Bokaro Steel Plant v. C.C.E., Patna 2001 (137) ELT 922 allowing the condonation of any delay. In this case, the delay had occurred because the appeal was wrongly addressed to the Commissioner (Appeals).

4. On merits, it is being pointed out that the dispute is regarding the correct classification and the goods in question remain confiscated with the Customs authorities.

5. We are of the view that grave injustice would be caused if the appeal is rejected on the ground of limitation. The authorities brought before us also support the restoration of the appeal, in view of the peculiar circumstances leading to the finding that the appeal was delayed.

6. In view of what is stated above, the stay application is allowed.

Further, the appeal also is allowed by way of remand since the Commissioner (Appeals) has not gone into the merits of the case at all.

Commissioner (Appeals) is directed to take the appeal on record and pass an order on merit at the earliest in view of the tact that imported goods are under detention. The stay application and appeal are ordered accordingly.