

Anil Impex Vs. Designated Authority

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-02-2005

Judge : R Abichandani, M T K.C., M Ravindran

Appellant : Anil Impex

Respondent : Designated Authority

Judgement :

1. By these applications the appellants have prayed for condonation of delay of 786 days in filing of the appeals against the impugned notification issued by the Central Government under Section 9A(1) and (5) of the Customs Tariff Act. It is stated in the applications for condonation of delay that the provisional assessments of anti-dumping duty were finalised only in May 2004 and the applicants had pursued the remedy before the Commissioner (Appeals). They challenged paragraph 2 of the impugned notification in Writ Petition No. C/16370-71/2004, which came to be decided on 4-4-2005. According to the applicants, in view of the said petition, they did not file the appeals against the impugned notification. However, in view of the directions of the High Court, they have now filed the appeals with a prayer to condone the delay in filing of the appeals.

2. We have heard the learned Counsel for the designated authority. He submitted that the petitions were filed before the High Court on 8-9-2004 much after the prescribed period of limitation in filing the appeals under Section 9A before this Tribunal against the notification dated 10-12-2002. It was submitted that on the date on which the petition was filed before the High Court, the appeals under

Section 9C would have been time barred by nearly one and half years. He, therefore, submitted that since no sufficient cause is shown for that period, the delay may not be condoned.

3. The averments which have been made in the applications for condonation of delay have not been controverted by filing any affidavit in reply. It appears from the order of the High Court dated 4-4-2005 that the learned Counsel for the respondents Union of India and others had stated before the High Court that the petitioners would be at liberty to challenge the determination including the correctness of Clause 2 of notification dated 10-12-2002 whereunder the imposition of anti-dumping duty has been made effective from 21st December 2001. The High Court, in view of the statement made on behalf of the respondents, has relegated the applicants to prefer these appeals under Section 9C of the Act with liberty to raise the said contentions including against the validity of the notification. In the last paragraph of the judgment, the Hon'ble High Court has observed that in view of the statement made on behalf of the respondents, if objection as regards limitation is raised, they had no doubt in their minds that this Tribunal shall entertain the same by condoning the delay, if any, in accordance with law. This observation amounts to a virtual direction to the Tribunal to condone the delay in filing of these appeals which have been preferred within four weeks as directed by the High Court and there is no scope for examining the question of the delay of one and half years prior to the filing of the writ petition in the High Court which could have been a very pertinent aspect to be taken into consideration while deciding the question of condonation of delay. In view of the directions of the High Court requiring us to entertain the appeals by condoning the delay, we allow both these applications and condone the delay in filing the two appeals. Both these applications are disposed of accordingly. Since both the appeals are already shown on the final hearing board along with these applications, they will now be finally heard.