Abc Paper (Formerly Amrit Paper) Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/41141

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-14-2005

Judge : M T K.C.

Appellant : Abc Paper (Formerly Amrit Paper)

Respondent : Cce

Judgement :

1. In these two applications for condonation of delay, the applicants are seeking condonation of delay of 11 months on the ground that the order-in-appeal passed by the Commissioner (appeals) was not received by them and they came to know about the order only when recovery proceedings were initiated against them. Then they obtained the copy of the order dated 30.9.2003 passed by the Commissioner (appeals), on 19.11.2004 and immediately filed the appeal. It is, therefore, pleaded that since the order of the Commissioner (appeals) was not communicated to them, the delay in filing of the appeals may be condoned.

2. On behalf of the Revenue, it was pleaded that the impugned order was sent to them by speed post as it is apparent from the dispatch register of the Commissioner (appeals). However, whether the address was correctly written cannot be verified from the dispatch register. The claim of the Revenue is that the since the order was not received back, therefore, it should be treated as service on the appellants.

3. I have considered the submissions. I find that the order, was dispatched to the applicants on 30.9.03 as per dispatch register.

However, there is no evidence whether the order was actually served on the applicants. The applicant's factory was working during that period and it was not closed. In these circumstances, the acknowledgement of service is necessary to establish that the order was communicated to them. Since no such acknowledgment of service is there, therefore, delay is condoned. COD applications are allowed.

4. These two stay applications have been filed on the ground that the applicants have taken credit of Rs. 62,036/- and Rs. 20,529/- for which they were not eligible. The original authority allowed these credits but on appeals by the department, the Commissioner (appeals) disallowed these credits and imposed penalty of Rs. 6,500/- and Rs. 2,500/-respectively.

5. It was pleaded that in case of credit of Rs. 62,036/-, the duplicate copy of invoice was lost by the driver in transit and they took credit of the goods and intimation to the Assistant Commissioner about the loss of duplicate copy of the invoice was sent. Credit on the certified original copy in other case relating to Rs. 20,529/- was taken as the original and the duplicate were lost and they intimated to the Assistant Commissioner and sought permission for taking credit. In this case, they took the credit on the certified copy of the invoice by the originating Range. In both these cases, they took credit as six months period was expiring and no permission from the Assistant Commissioner was received by them. Instead of giving permission, show cause notice was issued to them. However, the A.C. allowed the credit in the adjudication order. The Revenue filed the appeal before the Commissioner (appeals) who denied the credit and imposed penalty. Now, they are seeking stay of the recovery of penalty as well as credit.

6. On behalf of the Revenue, it was pleaded that since credit was taken without permission from the A.C., therefore, the Commissioner(appeals) has correctly denied the credit and imposed penalty.

7. I find that prima-facie when the applicants have followed the procedure by intimating the Assistant Commissioner about the loss of the invoices and there is no denial of the fact that the goods were received by the applicants and the goods were duty paid and the procedure for taking credit by seeking condonation by Assistant Commissioner about the loss of duplicate copy was followed by them, credit should not have been denied and the same was done by the original authority. Since the lower Appellate Authority i.e.

Commissioner (appeals) took a different view, the matter requires detailed examination. Prima-facie, I am of the opinion that no pre-deposit is required in these cases. I, therefore, allow both the stay applications and waive pre-deposit of the duty and penalty for hearing the appeals. The appeals; will come up for hearing in due course