

Schon Pharma Ltd. Vs. Commr. of Cus. (Airport)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-23-2007

Reported in : (2007)(213)ELT561Tri(Mum.)bai

Judge : T Anjaneyulu

Appellant : Schon Pharma Ltd.

Respondent : Commr. of Cus. (Airport)

Judgement :

2. Earlier this Tribunal by order dated 26-10-2005 dismissed the restoration application. Prior to that the appeal filed by the applicant was dismissed by an ex parte order without hearing the applicant. An observation was made on hearing the Id. DR that the appeal involves penalty of Rs. 5,000/- and redemption fine of Rs. 5,000/- without making any reference to the subject goods of the value of Rs. 3 lakhs approximately, which were ordered for re-export on the ground that they were sub-standard. The restoration application was dismissed on the premise that the impugned order passed by the Commissioner (Appeals) on the ground of limitation, as such the Tribunal refrained from allowing the application without discussing its merits. What ought to have been seen as on the date of the passing of the impugned order in the main appeal, 'the absence of the party and their counsel was justified or they were prevented from sufficient cause etc. and explanation offered thereon is satisfactory or not'. In the impugned order dated 26-10-2005 while dismissing the restoration application nothing has been discussed. Therefore, it gave scope to the applicant to file present application for modification.

Having considered all these aspects I do find that there exists justification in seeking restoration of Appeal in toto, whatever the worth it may be on merits. Accordingly, the present application is allowed and the appeal is restored to its original number. Post the appeal to 27-2-2007. No notice.

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