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Encore Events Vs. the Commissioner of Central

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Aug-22-2007

Reported in : (2008)13STT173

Judge : S Peeran, J T T.K.

Appellant : Encore Events

Respondent : The Commissioner of Central

Judgement :
1. The stay application and appeal are taken up together for disposal, as the impugned order has been passed by the Commissioner (Appeals) in terms of Section 85 of the Finance Act, 1994, dismissing the appeal as having been filed beyond the statutory period. The findings recorded in the order is reproduced herein below: I have carefully gone through the records of the case. I find from the records that the Order-in-Original No. 01/2005 dated 28.12.2005 which is the subject matter of the appeal, is said to have been received by the appellant on 08.09.2006. However, as per the postal acknowledgement available in the case records of the department, the said OIO, dispatched by the department by speed post on 02-01-2006, was delivered by the postal authorities on 05-01-2006. The appellant had filed the appeal only on 26-09-2006 i.e. after a lapse of more than six months from the date of receipt of the OIO. No reasons has been put forth by the appellant for the said inordinate delay. The appellants claim that they have received the Order-in-original only on 08-09-2006 is incorrect. Under no stretch of imagination, the date of supply of photocopy of the order can be construed as the

date of receipt of the original order, when the postal acknowledgement is available on record, which bears the seal and signature of the appellant. Since the appeal is filed beyond the period of condonable delay prescribed under Section 85 of the Finance Act, 1994, the same cannot be entertained under the law as I have no authority to condone this delay. The application is therefore liable to be rejected as barred by limitation. I, therefore, do not find any reason to examine the merits of the case.

I have also kept reliance on the following case laws.

1) Pranam Enterprises v. Commissioner of Sales Tax, New Delhi Abhishek Auto Industries v. CC, Mumbai 5) Krishak Bharti Cooperative Ltd. v. CCE, Surat reported in 2003 (159) ELT 0352(Tri.Del.) I, accordingly reject the appeal filed by Shri A.J. Surendranath, Proprietor, M/s. Encore Events, Bangalore, against the OIO No. 01/2005 dated 28-12-2005 passed by the Joint Commissioner of Service Tax, Bangalore, as barred by limitation of time under Section 85 of the Finance Act, 1994.

2. We have heard the learned Consultant and the learned JDR. The learned JDR files detailed reply and proof of service of the order on the appellants and contends that as the order had been delivered to them, therefore, they have filed their appeal beyond the statutory period of limitation and cannot be sustained in terms of law.

3. The learned Consultant reiterated his submission that the date of delivery of order can be construed as the date of original order.

However, on our careful consideration, we find that the OIO has been served on the appellants and the postal acknowledgement is available on record as noted by the Commissioner (Appeals). A copy has been produced by the JDR. As the appellants have not filed the appeal within the statutory period, the Commissioner(Appeals) was justified in dismissing the appeal on time bar. The stay application and appeal are, therefore, dismissed as not maintainable.

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