

Cce Vs. Shivam Textiles

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Ahmedabad

Decided On : Dec-10-2007

Reported in : (2008)(126)ECC12

Judge : V T M.

Appellant : Cce

Respondent : Shivam Textiles

Judgement :

1. This is an appeal by the Department against the order of the Commissioner (Appeals) No. 26 to 27/2007(Ahd-I) dt. 24/1/2007.

a. In this case, Commissioner (Appeals) has admitted and disposed of an appeal filed after expiry of the extended period (the normal period + the period upto which he can condone the delay). The Department seeks to declare the order as not legal and not proper.

b. The order of the Original Authority dt. 20/3/2006 has been sent by registered post with acknowledgement due. The postal acknowledgement has been received back in the office of the Original Authority on 6/4/2006. The respondent filed the appeal on 24/11/2006 claiming that the appeal has been filed in time.

c. According to the respondent, the order-in-original was received in a brown coloured envelope by their clerk Shri Amritbhai S. Prajapati and somehow it was placed under his drawer; somehow the same was misplaced which was ultimately

got searched out and discovered on 3/10/2006 when the proprietor of the firm enquired about it. Therefore, the respondent claimed that the service was effected only on 3/10/2006 and accordingly their appeal filed on 24/11/2006 was in time.

4. Ld. SDR submits that Commissioner (Appeals) has no powers to entertain an appeal on 24/11/2006 when admittedly the order-in-original has been received by the respondent before 6/4/2006 as evidenced by the postal acknowledgement received in the office of the Original Authority. This is in clear violation of the provisions of Section 35, which prescribes the normal time limit and the period up to which delay can be condoned.

5. I have carefully considered submissions. The respondent are not disputing that the order dt.20/3/2006 has been received in their office before 6/4/2006. On the ground that the order was misplaced by the clerk of the respondent firm, the commissioner does not acquire power to condone the delay beyond the permissible limit. Under these circumstances, the Commissioner (Appeals)'s finding "therefore, I have every reason to believe that the order was received only on 3/ 10/2006 by its proprietor" is not relevant. By this finding he has, in effect, condoned the delay beyond what is provided in the statute. This is contrary to the letter and spirit of the provisions of Section 35 prescribing the time limit. Commissioner (Appeals) should not have admitted the appeal and therefore the order of the Commissioner (Appeals) is not legal and proper. Accordingly, the order of the Commissioner (Appeals) is set aside and order of the Original Authority is restored.

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