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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-06-1989

Reported in : (1990)(47)ELT61TriDel

Appellant : Collector of Customs

Respondent : Carborandum Universal Ltd.

Judgement :

1. Both the sides submitted that the appeal has been filed after the normal period of limitation and therefore at first the question of condonation of delay may be taken up and then the appeal may be decided in the light of decision thereon.

2. Heard learned JDR. He submitted that on the basis of the stand already taken by the Custom House on the D.P. 50/82 it was initially felt by the Deptt. that the "Abrasive base paper" though comprised of unbleached sulphate pulp, is not "commonly known kraft paper". In the circumstances, it was decided not to contest the Order (Appeals) No.03/317/1982 communicated to the Deptt. on 25-6-1984. This decision was taken on 15-9-1984. Meanwhile the issue regarding the rate of additional duty applicable to Abrasive backing paper was included in the Agenda for the Tariff Conference of the Collectors of Customs held on 20th to 22nd Sep. '84. In this Conference, it was decided on the basis of the opinion of the Chief Chemist present at the Conference that since the paper in question comprised of unbleached sulphate pulp it is an indication to classify the same as kraft paper. By appearance also, its use as wrapping and packing paper could not be ruled out. The official minutes of the Tariff Conference was received in late Nov.1984. The

issue was reviewed in the light of the Tariff Conference decision. As the matter had to be considered in depth in face of divergent views on the subject, there was some delay in filing the appeal, which in the circumstance may be condoned.

3. Learned Counsel opposed the prayer on the ground that this does not disclose sufficient cause.

4. We find that, from the condonation application itself, it is apparent that the Deptt. had initially decided not to contest the order of the Collector (Appeals) and not to file the appeal and subsequently they changed their view and decided to file this appeal. In the meanwhile, the normal period of limitation had expired. From this, it is clear that it was upto Deptt. to keep the matter open and file the appeal in the normal time and the Deptt. has not been able to show sufficient cause as to bow it did not avail of that opportunity. On the contrary, a conscious decision had been taken at first not to file the appeal. Subsequently, they have reviewed the decisions.

5. In our opinion, this was not a proper ground and would not constitute sufficient cause for condonation of delay. In these circumstances, we see no reason to grant the prayer. We, therefore, dismiss the condonation application. Consequently, the appeal is dismissed as time-barred.