

Jayant Extraction Industries P. Vs. Collr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-29-1993

Reported in : (1995)(75)ELT511Tri(Mum.)bai

Appellant : Jayant Extraction Industries P.

Respondent : Collr. of C. Ex.

Judgement :

1. In all the three cases, stay applications were only listed for hearing. After hearing both sides, we take up the appeals themselves for disposal since the matter calls for a remand back to the Collector (Appeals).
2. All the three appeals are against the same Order in Appeal No. 639 to 641/93 (83 to 85-RAJ)CE/AHD/Collr. (A), dated 29-8-1991 passed by the Collector of Central Excise (Appeals), Ahmedabad.
3. In this case, the Collector (Appeals) has rejected their three appeals as time barred without going into the other aspects of the appeals. The delay involved is 6 days. The appeals ought to have been filed before the Collector (Appeals) on 21-12-1989. They are stated to have been despatched on 18-12-1989 by Registered Post, which were received in the office of the Collector (Appeals) on 27-12-1989 and in that process the delay of 6 days has occurred.
4. Shri P.M. Dave, the learned advocate pleaded that this unit is under BIFR and this unit was closed since 1985 and hence considering the distance from

Jamnagar to Ahmedabad, they sent it by Registered Post within the time limit prescribed.

5. Shri Mondal, the learned SDR, vehemently opposes that there is a deliberate delay and if they are filing appeal at the fag end of the appeal period, they should have ensured delivery of the appeals in the office of the Collector (Appeals) personally. He also pleads that suitable deposits be ordered, in case the appeals are remanded back to the Collector (Appeals) on merits.

6. After hearing both sides, we find that the unit is under BIFR and the factory is reported to have been closed since long and hence posting of the appeals within the limited period has to be viewed with leniency it otherwise deserves. Hence, we condone the delay and remand the cases back to the Collector (Appeals) who may consider waiver of pre-deposit, if the case otherwise warrants and if he so waives deposit, he may also go into the merits of the appeals and pass orders in accordance with law. In case he finds that pre-deposit is necessary, suitable personal hearing may be given to the appellants and thereafter pass orders.

7. All the three appeals are disposed of by way of remand. Hence stay applications do not survive for consideration.

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