

**Sameer Recording Electronics Vs. Collector of Customs**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-14-1994

**Reported in :** (1995)(76)ELT162TriDel

**Appellant :** Sameer Recording Electronics

**Respondent :** Collector of Customs

**Judgement :**

1. This is an application for condonation of delay in filing the appeal and for staying the operation of the order, seeking waiver of pre-deposit under Section 129-E of the Customs Act, 1962 by the petitioners.

2. Shri Kumaraswamy, learned Consultant concedes at the outset, that the delay is quite long but points out that the delay is due to their having pursued alternative remedies before the High Court and thereafter in the Supreme Court. The Supreme Court had, vide their judgment dated 10-1-1994, dismissed their S.L.P. but left it open to them to approach the Customs authorities for any accommodation in the matter of grant of time for payment. The learned Consultant in his written brief, has referred to a number of decisions where delays, on account of the concerned applicants spending time by way of alternative remedies in the Court, had been directed to be condoned. He pleads that on the basis of such decisions, their present request for condonation of delay may be allowed.

3. Shri K.K. Jha, learned DR replies to the arguments advanced by the learned Consultant and refers to the News item appearing at page A-59 of Excise Law

Times Vol 73 Part I 1st September, 1994, 4th Issue wherein the decision of the Supreme Court confirming the decision of Tribunal in rejecting the application for condonation of delay, it was held that time spent in pursuing the Writ petition in the High Court, shall not be excludible in the absence of stay order or direction to the contrary by the Court. Shri Jha relies upon this judgment and states that in this case the Supreme Court has not given any direction to the Tribunal to condone the delay and take up the appeal for decision on merits.

4. We have considered the submissions made by both the sides. We have gone through the gist of the decisions referred to by both the sides.

We find that in these cases, the delay on account of the petitioners pursuing alternative remedies open to them before the Courts, had been ordered to be condoned by a specific direction. In the present case, in the absence of any direction, the delay is not condonable. While pursuing the other remedies before the Courts, the petitioners should have taken care to file an appeal before the Tribunal as required under the law and as per the directions contained in the impugned order itself. As we have declined to condone the delay, we dismiss the application and the appeal is accordingly dismissed as time-barred.

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