

S.H. Re-rolling Mills Vs. Commissioner of Central Excise, Nashik

S.H. Re-rolling Mills Vs. Commissioner of Central Excise, Nashik

SooperKanoon Citation : sooperkanoon.com/943189

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-12-2012

Judge : The Honourable Mr. S.S. Kang, Vice President & the Honourable Mr. Sahab Singh, Member (Technical)

Appeal No. : APPLICATION No. E/ROA/1154/12 APPEAL No. E/926/11 Arising out of Order-in-Appeal No. AKP/01/NSK

Appellant : S.H. Re-rolling Mills

Respondent : Commissioner of Central Excise, Nashik

Advocate for Pet/Ap. : For the Appellants : M.S. Jagesha, Advocate. For the Respondent : Ms. D.M. Durando, Deputy Commissioner (AR).

Judgement :

S.S. Kang

The applicant filed this application for restoration of appeal. The appeal was dismissed as none appeared on the date fixed. In view of the reasons explained, i.e. due to illness of the counsel, appearance could not be made. In these circumstances, the order dismissing the appeal is recalled. The COD application, stay petition and the appeal are restored to their original numbers.

2. The applicant filed application for condonation of delay of 48 days in filing the appeal along with stay petition. The Commissioner (Appeals) dismissed the appeal

as time barred. The Commissioner (Appeals) in the impugned order held that the adjudication order was communicated to the appellant on 13.8.2010 and the appeal was filed on 10.12.2010 beyond the condonable period prescribed under the Central Excise Act and the Commissioner (Appeals) has no power to condone the delay beyond the period prescribed under the Central Excise Act.

3. We find that as per the provisions of Section 35(1) of the Central Excise Act, the appeal is to be presented within a period of 60 days and the Commissioner (Appeals) is empowered to condone the delay of 30 days on showing sufficient cause for not filing the appeal within the normal period of limitation.

4. We find that this issue is already settled by the Hon'ble Supreme Court in the case of Singh Enterprises vs. CCE, Jamshedpur reported in 2008 (221) ELT 163 (SC). The Hon'ble Supreme Court held that the Commissioner of Central Excise (Appeals) has no power to condone the delay beyond the permissible period under the Central Excise Act. In these circumstances, as the appeal has been filed before the Commissioner (Appeals) even beyond the condonable period, therefore we find no infirmity in the impugned order. In these circumstances, we are dismissing the application for condonation of delay. Accordingly, the Stay application and the appeal are also dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com