

**(2008) 12 KL CK 0036**

**High Court Of Kerala**

**Case No:** Writ Petition (C) No. 34529 of 2008 (I)

Duroflex Exports Pvt. Ltd.

APPELLANT

Vs

Commr. of Cus., C. Ex. and  
Service Tax

RESPONDENT

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**Date of Decision:** Dec. 4, 2008

**Citation:** (2010) 19 STR 473

**Hon'ble Judges:** H.L. Dattu, C.J; A.K. Basheer, J

**Bench:** Division Bench

**Advocate:** Joseph Kodianthara, for the Appellant; Tojan J. Vathikulam, S.C., C.B. Excise, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

H.L. Dattu, C.J.

Petitioner calls in question the legality or otherwise of the orders passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore ("Tribunal" for short) in Miscellaneous Application and Appeal No. C/COD/363/2007 in C/668/2007 dated 22-8-2008.

2. Petitioner before us, being aggrieved by the orders passed by the Commissioner of Customs, Cochin, in Order-in-Original No. 7/2007 dated 27-2-2007 had preferred an appeal before the Tribunal. In filing the appeal there was a delay of 145 days. To condone the delay in filing the appeal, an application had been filed by the petitioner/appellant. In that application the petitioner has stated the reasons for approaching the Tribunal belatedly.

3. The Tribunal, by its impugned order has rejected the appeal, solely on the ground, that, in the original order passed, there is a mention that, if for any reason, the petitioner is aggrieved by the original order, he has to question the same within 90 days from the date of the order. Apart from this reason, Tribunal has not assigned any other reason for rejecting the application filed by the petitioner.

4. There is a discretion vested in the Tribunal to condone the delay, if any, if sufficient cause is shown by the applicant in approaching the Tribunal, if for any reason, he is aggrieved by the original order passed by the authority under the Act. The Tribunal is expected to find out whether the applicant has shown sufficient cause. If the Tribunal is not satisfied with the cause shown, then only it can reject the application, and, consequently the appeal. Merely because in the original order it is stated that, the appeal requires to be filed within 90 days from the date of the order, and, if such appeal is not filed within that time, the Tribunal cannot come to the conclusion that, sufficient cause is not shown by the applicant in approaching the Tribunal belatedly.

5. In the instant case, the petitioner has shown sufficient cause in approaching the Tribunal belatedly. In our considered opinion, the delay in filing the appeal ought to have been condoned by the Tribunal and ought to have decided the appeal on merits. In that view of the matter, we pass the following:

#### ORDER

(i) Writ Petition is allowed.

(ii) The impugned order passed by the Tribunal in Misc. Application and Appeal No. C/COD/363/2007 in C/668/2007 dated 22-8-2008 (Misc. Order No. 384/2008 and Final Order No. 1049/2008 dated 22-8-2008) is set aside and the delay in filing the appeal is condoned.

(iii) The Tribunal is directed to restore the appeal filed by the petitioner on its Board and decide the appeal on merits.

Ordered accordingly.