courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 21/10/2025

Thameema Trading Corpn Vs Commr. of Cus. (Seaport-Import), Chennai

Writ Petition No. 16062 of 2009 and M.P. No. 1 of 2009

Court: Madras High Court

Date of Decision: Sept. 1, 2009

Acts Referred:
Customs Act, 1962 â€" Section 112, 125, 28(2)

Citation: (2012) 276 ELT 175 : (2013) 29 STR 207

Hon'ble Judges: V. Ramasubramanian, J

Bench: Single Bench

Advocate: B. Sathish Sundar, for the Appellant; K. Ravichandra Babu, Senior Panel Counsel, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Ramasubramanian, J.
The petitioner has come up with the present Writ Petition challenging the refusal of the Customs, Excise and

Service Tax Appellate Tribunal to condone the delay in filing the statutory appeal. Heard Mr. B. Sathish Sundar, learned counsel for the petitioner

and Mr. K. Ravichandra Babu, learned senior panel counsel for the respondents.

2. The petitioner filed a Bill of Entry on 3-11-2005, declaring the goods covered by the same as plastic toys classified under a particular category.

But after examination of the goods, the Assistant Commissioner of Customs passed an order dated 2-3-2007 reclassifying the goods and

demanding a duty of Rs. 2,01,082/-. The petitioner paid a sum of Rs. 51,548/- and hence the differential duty of Rs. 1,49,534/- was demanded

u/s 28(2) of the Customs Act along with the redemption fine of Rs. 1,50,000/- u/s 125 of the Customs Act, 1962 and a penalty of Rs. 1,00,000/-

u/s 112(a) of the Customs Act 1962.

3. The petitioner filed an appeal before the Commissioner of Customs (Appeals) but the same was dismissed on 8-5-2007. As against the said

order, the petitioner filed an appeal to the Tribunal on 10-4-2009. Since there was a delay in filing an appeal, the petitioner filed an application to

condone the delay of 601 days. By the order dated 19-5-2009 impugned the writ petition, the Tribunal refused to condone the delay, forcing the

petitioner to come up with the present writ petition.

4. It is seen from the application filed by the petitioner seeking condonation of delay that the petitioner shifted their office from No. 4, Leith Castle

South Street, Santhome, Chennai to Second Line Beach, Chennai-600 001 in April 2007 and that the original order of the Appellate

Commissioner was received at the old place of office and misplaced. The Tribunal did not accept it as a sufficient reason to condone the delay.

5. However, I am of the considered view that the reasons stated by the petitioner in the condone delay petition are not unbelievable. The Tribunal

did not think that the petitioner has adduced a false reason. Once the bona fides are not suspected, the Tribunal could have accepted the reason

for the delay and entertained the appeal, by imposing some conditions.

6. As a matter of fact the petitioner admittedly has paid a duty of Rs. 51,548/- out of a total duty amount of Rs. 2,01,082. In respect of the

redemption fine of Rs. 1,50,000/- and penalty of Rs. 1,00,000/- the petitioner has admittedly executed a Bank Guarantee for a total amount of Rs.

2,50,000/-. The Bank guarantee is in force upto 9-9-2009. Therefore I am of the considered view that the delay could be condoned, by imposing

some conditions. In view of the above, the Writ Petition is allowed, the order impugned is set aside and the application of the petitioner to condone

the delay is allowed on condition that the petitioner makes payment of a sum of Rs. 1,00,000/- within a period of four weeks from the date of

receipt of a copy of this order to the first respondent. Upon production of proof of having made payment of the said amount, the second

respondent Tribunal shall treat the condone the delay petition as having been allowed and take up the appeal on merits and dispose of the same, in

accordance with law, within a period of three months from the date of entertaining the appeal. The writ petitioner shall also keep the Bank

Guarantee for the amount of Rs. 2,50,000/- already executed by them alive till the disposal of the Appeal by the Tribunal. If the petitioner fails to

make payment, the condone delay petition shall stand dismissed. No costs. Consequently connected Miscellaneous Petition is also closed.