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**(2003) 11 CAL CK 0052**

**Calcutta High Court**

**Case No:** Writ Petition No. 1153 of 2002

Bengal Rolling Mills Ltd.

APPELLANT

Vs

CEGAT

RESPONDENT

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**Date of Decision:** Nov. 19, 2003

**Acts Referred:**

- Central Excises and Salt Act, 1944 - Section 35B

**Citation:** (2004) 168 ELT 441

**Hon'ble Judges:** Kalyan Jyoti Sengupta, J

**Bench:** Single Bench

**Advocate:** Pratap Chatterjee, Shymal Sarkar and Ashish Chakraborty, for the Appellant;

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### **Judgement**

@JUDGMENTTAG-ORDER

Kalyan Jyoti Sengupta, J.

In spite of direction given, no affidavit-in-opposition has been filed.

2. This writ application has been filed impugning the order of the Customs Excise & Gold (Control) Appellate Tribunal, Kolkata whereby the petitioners' application for condonation of the delay in preferring the appeal was rejected as the Learned Tribunal found that petitioners had not been able to make out sufficient cause. Learned Tribunal observed that the statements and averments made in the petition together with the affidavit do not constitute sufficient ground. It is true this order is a discretionary one but it is settled principle of law that discretion has to be exercised reasonably and not arbitrarily. The approach should have been as to why the delay should not be condoned, in other words, putting the burden upon the respondents to prove that delay should not be condoned.

3. It appears from the application together with supporting affidavit filed before the Tribunal, the petitioners stated that immediately after receipt of the order, sought to be appealed against, all the papers together with the certified copy of the order

were handed over to their representative Sri S.K. Roychowdhury in the month of March, 2000. What he did on receipt of the same is unknown to the petitioners. Ultimately the representative died. It is settled position of the law as enunciated by the Apex Court, that laches and negligence on the part of the Advocate or the authorised agent is a sufficient ground and reason for condonation of delay. What more a litigant could do after having handed over all papers and documents for preparing the appeal. Therefore the litigant petitioner should not be made to suffer on the ground of laches and negligence on the part of the Ld. previous Lawyer. Delay is about seven months. I think the Learned Tribunal approached in a wrong direction by not following the established principles of law, as stated above.

4. Therefore, I hold that the petitioners have been able to make out sufficient cause. Thus, I allow the writ petition and condone the delay.

5. Accordingly, the judgment and order of the Learned Tribunal is set aside. So, I direct the Learned Tribunal to register the appeal and hear it out on merit, in accordance with law,

6. The writ petition is thus disposed of.

No order is passed as to costs