Bengal Rolling Mills Ltd. Vs CEGAT

Writ Petition No. 1153 of 2002

Court: Calcutta High Court

Date of Decision: Nov. 19, 2003

Acts Referred:
Central Excises and Salt Act, 1944 â€" 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;

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