(2009) 02 BOM CK 0109

In the Bombay High Court

Case No : Customs Appeal No. 10 of 2009

A. Abba and Sons APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 25-02-2009

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35(B)

Citation : (2010) 260 ELT 48

Hon'ble Judges : Ranjana Desai, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : H.R. Shetty, for the Appellant; S.I. Shah and Suresh Kumar, for the Respondent

Judgement

1. Admit on the following substantial question of law.

Whether the Tribunal was justified in dismissing the appeal filed by the Appellant on the ground that even though as per the provision of Section 35(B) of the Central Excise Act the Tribunal has power of condone the delay within the period of limitation?

2. The Respondents waive service. By consent of the parties, taken up for final hearing and disposal.

3. The Appellant is aggrieved by Order dated 4-6-2008 whereby the Customs, Excise & Service Tax Appellate Tribunal (for short, "the Tribunal") has refused to condone the delay of 10 months in filing the appeal. The Appellant''s case is that he was suffering from depression and was found fit to resume duties only in February, 2008. The Tribunal has observed that the appeal was filed on 26-3-2008 and there was no explanation offered as to why the appeal could not be filed immediately after the Appellant was found fit to resume duties as per the medical certificates filed by him. After the Appellant got out of depression in February, 2008, he has filed the appeal within a period of one month thereafter. In the circumstances of the case, therefore, we are of the opinion that sufficient

cause for not filing the appeal in time has been shown by the Appellant. The explanation offered by the Appellant deserves to be accepted. Hence, the impugned order is set aside. The delay in filing the appeal is condoned. The Tribunal shall proceed to dispose of the appeal in accordance with law.

4. The instant appeal is disposed of in the aforestated terms.

