

(2010) 03 CAL CK 0008
In the Calcutta High Court

Case No : G.A. No's. 3088-3089 of 2009 and CEXA No. 64 of 2009

Commissioner of Central Excise

APPELLANT

Vs

Howrah Gases Ltd.

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Citation : (2010) 256 ESC 211

Hon'ble Judges : Sengupta, J;Debasish Kar Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. G.A. No. 3088 of 2009 is an application for condonation of delay. In paragraph 3 of the application the cause which is sought to be made for condoning the delay is summarised hereunder.

2. The petitioner received a copy of the order passed by the Learned Tribunal on 30th May, 2006. No date has been mentioned when the same was verified by the department and the concerned department forwarded the said order to the Commissioner for his perusal. It appears that taking inspiration from the order of admission of appeal dated 31st July, 2006 by Goa Bench of Bombay High Court against the order of West Zonal Bench of CESTAT, the concerned officials started taking action. On 2nd November, 2006, the petitioner issued a letter to the Ministry of Law & Justice for opinion only. The petitioner discussed the matter with the Joint Secretary and the Government Counsel, Ministry of Law & Justice on 20th November, 2006 and 22nd December, 2006 and the departmental procedure then proceeded with till 24th January, 2007. On 21st June, 2007, a conference was held with the learned Advocate and the concerned officials for preparation of the appeal and necessary applications. It is mentioned that from 20th April, 2007 till 7th March, 2009, the Bolpur Commissionerate perused the matter and requested the learned Advocate to submit the copies of memorandum of appeal alongwith stay application.

3. The explanation that the Bolpur Commissionerate will take more than one year to peruse the papers is not simply acceptable. Ultimately on 30th August, 2009 there has been engagement of lawyer. Since there is no explanation from 7th March 2009 till 30th August, 2009, we are of the view that the aforesaid averments made in the application for condonation of delay are not sufficient for the Court to exercise its discretionary power to condone the delay. Hence, we are reluctantly rejecting this application for the aforesaid reasons. Thus, the application is dismissed.

4. Since the application for condonation of delay is dismissed, the stay application being G. A. No. 3089 of 2009 along with the appeal also stands dismissed.

5. All parties are to act on a xerox signed copy of this order on the usual undertakings.