**(2011) 01 BOM CK 0129**

**In the Bombay High Court**

**Case No :** Customs Appeal No. 88 of 2010

Commissioner of Customs (Import) APPELLANT

Vs

Elecon Engg. Co. Ltd. RESPONDENT

**Date of Decision :** 12-01-2011

**Acts Referred:**
Project Import Regulations, 1986 — Regulation 7

**Citation :** (2011) 268 ELT 20

**Hon'ble Judges :** Mridula Bhatkar, J;J.P. Devadhar, J

**Bench :** Division Bench

**Advocate :** Pradeep S. Jetlyjor, for the Appellant; V. Sridharan and Prakash Shah, instructed by PDS Legal, for the Respondent

**Final Decision :** Dismissed

## Judgement

1. Whether the CESTAT was justified in condoning the delay in filing the reconciliation statement under Regulation 7 of the Project Import Regulations, 1986 is the question raised in this appeal.

2. During the period 1993-94 the Respondent had imported capital goods required for setting up of coal handling plant under the Project Import Regulations, 1986 and claimed exemption from the payment of duty under Heading 98.01 of the Central Excise Tariff Act. The goods were allowed to be cleared provisionally on execution of bond.

3. Rule 7 of the Project Import Regulations, 1986 requires the Importer to submit a statement indicating details of the goods imported together with necessary documents as proof regarding the value and quantity of goods imported within three months from the date of clearance for home consumption of the last consignment. The statement facilitates finalisation of the contract.

4. The statement was not filed by the Respondent within the time prescribed under Rule 7 but the same was furnished belatedly Treating the obligation to submit the statement within three months to be mandatory, the adjudicating

officer declined to take the statement on record and passed the order in original by declining to grant the benefit of exemption under the Project Import Regulations.

5. On appeal filed by the Respondent, the Tribunal by the impugned order set aside the assessment order and remanded the matter back to the adjudicating authority with directions to pass fresh order after considering the reconciliation statement submitted by the Respondent.

6. The grievance of the Appellant is that the requirement of submitting reconciliation statement within the period prescribed under Regulation 7 is mandatory and in the present case, the Respondent has furnished the statement beyond the period of three months and, therefore, the Tribunal could not have condoned the delay in filing the statement.

7. In our opinion, the requirement of furnishing the statement within three months under Rule 7 of the Project Import Regulations is directory and not mandatory, because, firstly, there is nothing in the provisions which disentitles the importer to avail the exemption if the statement is not submitted within the stipulated time. Secondly, Rule 7 itself provides for extending the period for submitting the statement. Since the Rule itself confers discretion to grant extension of time for furnishing the statement, in the facts of the present case, the discretion exercised by the Tribunal cannot be faulted, especially when the statement under Rule 7 was submitted before finalisation of the provisional assessment.

8. Accordingly, we see no merit in the contention raised by the revenue. The appeal is dismissed with no order as to costs.