**(2009) 12 P&H CK 0007**

**In the Punjab And Haryana At Chandigarh**

Ess Kay International — APPELLANT

Vs

Commissioner of Customs — RESPONDENT

**Date of Decision :** 24-12-2009

**Acts Referred:**

**Citation :** (2010) 254 ELT 453

**Hon'ble Judges :** M.M. Kumar, J;Jaswant Singh, J

**Bench :** Division Bench

## Judgement

M.M. Kumar, J.—Learned Counsel for the appellant has argued that appellant is a proprietor firm and the affairs of the firm is run by husband of the proprietor in his capacity as Manager.

2. Notice of motion.

3. Mr. H.P.S. Ghuman, Advocate, who is present in Court, has accepted notice on behalf of the respondent. Two copies of paper books have been handed over to him. With the consent of learned Counsel for the parties, both the appeals are taken up for final disposal.

4. These appeals are directed against order dated 21-8-2009 2009 (248) E.L.T. 827 passed by the Custom Excise & Service Tax Appellate Tribunal, New Delhi (for brevity ''the Tribunal''). An application for condonation of 73 days of delay in filing of appeal was filed before the Tribunal but the same was dismissed. It has come on record that appellant-firm is proprietorship concern with Mrs. Vishakha Arora as its sole Proprietor. The legal and other matters are looked after by her husband Sh. Rajinder Arora in his capacity as Manger of the firm. He was ill from 2-3-2009 to 25-5-2009. The appeal was required to be filed within three months from the date of receipt of a copy of the order. It has remained undisputed that copy of the order has been received on 3-1-2009 and the appeal could not have been instituted on or before 2-4-2009. The appeal was actually instituted on 15-6-2009. In the process delay of 73 days has occurred.

5. The Tribunal has taken the view by observing that Sh. Rajinder Kumar Arora,

 

Manager of the applicant-firm was not the only person for filing of appeal. In paragraph - 2, the Tribunal has pointed out that there was no explanation as to how the appellant was dependent on the Manager wholly and exclusively. However, in the absence of the husband of the proprietor, who was looking after the affirms of the firm, it might have been difficult for the proprietor-Mrs. Vishakha Arora to institute an appeal. Therefore, we find that there is sufficient ground to condone the delay. In such matter even otherwise, a liberal approach has to be adopted and the matter deserves to be decided on merits.

6. In view of above, the order dated 21-8-2009 of the tribunal is set aside. Delay of 73 days in filing of appeal before the Tribunal is condoned and Tribunal is directed to decide the appeal on merits.

7. A photocopy of this order be placed on the records of connected case.