**(2014) 11 UK CK 0032**

**In the Uttarakhand High Court**

**Case No :** Central Excise Appeal No. 1 of 2014

G.M.T.D. Bharat Sanchar Nigam Ltd. APPELLANT

Vs

Commissioner of Cus. and C. Ex. RESPONDENT

**Date of Decision :** 18-11-2014

**Acts Referred:**
Central Excises and Salt Act, 1944 — Section 11AC, 35B, 35B(5)

**Citation :** (2015) 38 STR 691

**Hon'ble Judges :** Sudhanshu Dhulia, J;Umesh Chandra Dhyani, J.

**Bench :** Division Bench

**Advocate :** Aditya Bhattacharya, Advocate holding brief of S.K. Posti, Advocate, for the Appellant; Shobhit Saharia, for the Respondent

## Judgement

1. This appeal is admitted on the following substantial questions of law:-

(a) Whether the Tribunal was justified in dismissing the delay condonation application of the appellant on the ground that the delay was not satisfactorily explained?

(b) Whether the Appellate Tribunal ought to have allowed the delay condonation application in terms of Section 35B(5) of the Central Excise Act, 1944?

(c) Whether the compliance of Rule 35 of Custom Excise & Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 was properly done by the appellate Tribunal or not?

The Commissioner of Central Excise, Meerut-I by the adjudication order dated 29-1-2010 confirmed the disallowance of Cenvat credit to the present appellant and directed its recovery and imposed a penalty of equivalent amount under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. Against the said order, the appellant preferred an appeal on 30-12-2010 along with the delay condonation application. The delay condonation application was rejected vide impugned order dated 3-2-2014 2014 (35) STR 386 (Tri.-Del.) by the Custom, Excise & Service Tax Appellate Tribunal, which is presently impugned before this Court.

2. The Statutory limitation, under Section 35B of the Central Excise Act, for filing appeal before the authority concerned, is three months. In the present case, the limitation expired on 29-6-2010. Therefore, the appeal filed by the appellant is delayed by a period of six months. The Tribunal has powers under Section 35B of the Central Excise Act, 1944 to condone the delay "if it is satisfied that there was sufficient cause for not presenting it within that period". The cause shown by the appellant for moving an application belatedly was that the order dated 29-1-2010 passed by the adjudicating authority was not communicated to the authorized person. This aspect has not been dealt with by the Tribunal while passing the order under challenge.

3. In any case, we feel that the delay condonation application should have been allowed, considering the facts and circumstances of the case, including the fact that the appellant is public sector undertaking of the Central Government. Consequently all the substantial questions of law are decided in favour of the present appellant-Bharat Sanchar Nigam Limited. Otherwise also, it has been observed by Hon''ble Apex Court in catena of decisions that the rules of procedure are handmaids of substantial justice. Looking at the things from this point of view also, the appeal deserves to be allowed. Accordingly the appeal is allowed. We direct the authority concerned to adjudicate the matter on its merit in accordance with law.

 