(2011) 08 BOM CK 0022

In the Bombay High Court

Case No : Central Excise Appeal (L) No. 10 of 2011

Makjai Laboratories Pvt. Ltd. — APPELLANT

Vs

Commissioner of Central Excise, Pune-II — RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35, 35(1)
Limitation Act, 1963 — Section 5

Citation : (2012) 190 ECR 20 : (2011) 274 ELT 48

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : Amit B. Borkar, for the Appellant; R. Ashokan with Jitendra B. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

1. On the delay being condoned, the appeal is taken on board on the request of the learned Counsel. The original order of adjudication was passed on 8 February 2005. There is a finding of fact that the order was received by the Appellant on 11 February 2005 as evidenced by the postal acknowledgment card. The appeal was filed before the Commissioner (Appeals) on 30 August 2005. u/s 35 of the Central Excise Act, 1944, an appeal before the Commissioner (Appeals) has to be filed within 60 days of the date of the communication of the decision or order appealed against. Under the proviso to sub-section (1) of Section 35, the Commissioner for sufficient cause may allow the appeal to be presented within a further period of 30 days.

2. The appeal, in the present case was filed even beyond the aforesaid period. The Commissioner (Appeals) is not a Court and therefore, Section 5 of the Limitation Act would have no application. The appeal, does not raise any substantial question of law. The appeal, therefore, stands dismissed.