(2014) 03 CESTAT CK 0016

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 328 Of 2009

?M/s Suresh Trading Co. APPELLANT

Vs

CC, New Delhi RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Citation : (2014) 03 CESTAT CK 0016

Hon'ble Judges : D.N. Panda, J;Manmohan Singh, Technical Member

Bench : Division Bench

Advocate : Reena Rawat, Sanjay Jain

Final Decision : Allowed

Judgement

1. Ld. Counsel submits that the impugned order was communicated on 08.12.2008 and last date of filing of appeal was 07.02.2009. Accordingly,

appeal was filed on 30.01.2009.

2. Ld DR says that when the appellant did not file any application for condonation of delay nothing was possible to be examined by ld. Commissioner

(Appeals). Therefore he has rightly rejected the appeal as time-barred.

3. Heard both sides and perused the record.

4. It appears that if date of communication of the impugned order was 08.12.2008 and appeal was filed on 30.01.2009, there appears no delay. Record

reveals date of communication of the impugned order is in question. Revenue says that the ld. Commissioner (Appeals) found that the impugned order

was despatched on 12.09.2008. Accordingly, limitation was to be counted from that date. But there is no whisper on examination of the public record

to ascertain the delay if any in filing appeal.

5. In view of the above, in all fairness it is necessary for ld. Commissioner (Appeals) to call for record from ld. Adjudicating authority to ascertain date

of service of impugned order and person on whom that was served and confront the evidence of service to the appellant for reply if any. If ld.

Commissioner (Appeals) is satisfied on evidence as to no delay in filing appeal, he shall pass appropriate order and dispose the appeal on merit. If the

evidence suggests otherwise, the time bar plea of the appellant may not be entertained in the event that was beyond his discretionary period. In that

situation he shall pass appropriate order on limitation without touching the merit.

6. In the result, appeal is remanded to the ld. Commissioner (Appeals).

[Dictated & Pronounced in the open Court].

