(2014) 09 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 1 Of 2010

M/s.Rational Business Corpn.Pvt. Ltd. APPELLANT

Vs

CC, New Delhi RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:

Citation : (2014) 09 CESTAT CK 0006

Hon'ble Judges : Archana Wadhwa, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Tushar Joshi, Govind Dixit

Final Decision : Allowed

Judgement

1. After hearing both the sides, we find that the Commissioner (Appeals) has rejected the appeals on the point of time bar by observing that there is

delay of about one year on filing the appeal before him, for which he does not have any jurisdiction to condone.

2. It is seen that that the impugned order was passed by the original adjudicating authority on 12.08.2008, rejecting the refund claims filed by the

appellant. The said order, as per observations made by the Commissioner (Appeals), was sent under speed post to the appellant on 13.08.2008.

However, as per the appellant, they had not received the order. In fact, they wrote to the department on 13.10.2008, inquiring about the result of the

adjudication on their refund claims. The said letter was not replied by the department, they again wrote to the department, as a consequence of which,

copy of the order was again sent to them on 16.07.2009 and received by them on 25.07.2009. The appeal stands filed by them within a period of 3

months from the date of communication of the order.

3. Apart from the fact that the order was sent by speed post and not under registered A/D, we also note that the appellant addressed a letter as early

as on 13.10.08 to the department seeking to know the result of their refund claim. By that time, the order was already passed by the Asstt.

Commissioner and if the said letter would have been responded by the Revenue, the delay would not have been so huge and would have been within

the powers of Commissioner (Appeals) to condone the same. We also note that the dispute is as regards the refund claim of the appellant and there is

no duty demand so as to attribute any malafide to the appellant for delayed filing of the appeal. As regards the assesseeâ??s contention it is only

subsequently when the order-in-original was against sent under the cover of letter dated 16.07.2009, the same was received by them on 25.07.2009.

As such, we are of the view that the appeal having been filed within the period of limitation, starting from the date of receipt of the order has to be

held as having been filed well within the time. We accordingly, set aside the impugned order and remand the matter to the Commissioner (Appeals)

for decision on merits.

