

Master Recording Co. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jun-28-1999

Reported in : (2000)(117)ELT216Tri(Chennai)

Appellant : Master Recording Co.

Respondent : Commissioner of Central Excise

Judgement :

1. This is a second restoration application filed by the applicant seeking restoration of the appeal dismissed for non-deposit of the amounts as directed by the Tribunal vide Stay Order No. 234/93, dated 29-7-1993. By this stay order, the appellants were directed to pre-deposit a sum of Rs.1.25 lacs as against Rs.5,15,258.70 within a period of two months from the date of the order and report compliance thereof. They have deposited only Rs. 25,000/- and not complied with the order fully. The appeal was therefore, dismissed for non-compliance as they had not report compliance on 31-3-994. Thereafter they have filed restoration application No. 852/97 and in that application, the learned Counsel had pointed out that the Government had issued an exemption under Section 37B of the Act and hence the stay order has to be modified and the appeal to be restored. The Tribunal at paras 4 & 5 of the Miscellaneous Order No. 525/97, dated 15-10-1997 passed the following orders : "We have considered the submissions of both the sides. The learned Advocate stated that the notification is retrospective in operation.

However, on a perusal of the above notification, it is seen that there are no specific words stating that these are retrospective effect. Even otherwise, the appeal was

dismissed for non-compliance of the order passed by the Tribunal, unless and until compliance is made by making the full pre-deposit of a sum of Rs. 1,25,000/-, the appeal cannot be restored.

5. The application, as it is, cannot be accepted and in this view of the matter, we dismiss the application." The appellants did not comply with the terms of this order immediately and they took their own time to pre-deposit the amount of Rs.1,00,000/- on 27-5-1998 and thereafter filed this Miscellaneous application seeking restoration of the appeal. The matter had been coming up for hearing again and again. The appellants filed COD application No.1267/98 seeking condonation of delay in pre-deposit of the amounts.

2. We have heard Ms. Anita Sumanth, learned Advocate for the appellants and Sri R. Victor Thyagaraj, learned SDR.3. The learned Advocate submits that the Tribunal has got powers to restore the appeals as held by the Hon'ble Gujarat High Court in the case of Hussain Haji Harun alias Hussein Kabiju v. U.O.I, as reported in AIR 1988 Guj. 218. She points out that the Tribunal in the case of Khatau Makanji Spg. & Wvg. Company Ltd. v. C.C. as reported in 1995 (64) E.L.T. 490 restored the appeal on fulfilment of pre-deposit conditions and likewise in the case of Western India Enterprises Ltd. v. C.C.E. as reported in 1994 (74) E.L.T. 46. She points out that the appellants had over-draft facility from the bank, however, the same was utilised for business purposes. In this regard, she produced bank statements and correspondence.

4. The learned SDR points out that they did not pre-deposit the amounts for more than 8 years in the matter and the appeal had been dismissed on one occasion for non-compliance and later the Tribunal refused to restore the appeal till such time the amounts are paid. The appellants have not deposited the amount immediately and took their own time. He therefore, submits that in these circumstances, there is no bona fide and the Tribunal should not exercise its discretionary power to restore the appeal. He also submits that the Tribunal had already expressed the view in the above extracted order that the Notification issued by the Government does not have retrospective effect, therefore, the appellants cannot take advantage of the Notification issued under Section 37B of the Act to claim total

waiver in the matter. He points out that the Hon'ble Supreme Court in the case of Nirlon Synthetic Fibres & Chemicals Ltd. v. U.O.I, as reported in 1998 (99) E.L.T. 22 (S.C.) has not restored the Writ Petition which was dismissed for non-appearance as the application having been filed after 1 year and 129 days. He also points out that the Tribunal did not exercise its power to restore the appeal in the case of GTC Industries as reported in 1997 (90) E.L.T. 460, wherein there was also a delay of more than 1 1/2 years. He also relies on the judgment rendered in the case of Standard Audio & Video Pvt. Ltd. v. C.C.E. as reported in 1999 (106) E.L.T. 532, wherein the original appeal was dismissed for non-deposit of the amounts and later the appellants had filed rectification application after a lapse of several years and had also sought for reference, however, the Tribunal refused to interfere with the matter.

5. In counter, the learned Advocate strongly pleaded that these judgments are not applicable to the facts of the present case and as the appellants were facing financial stringency, therefore, the Tribunal has to exercise its discretionary power to restore the appeal.

6. On a careful consideration of the submissions, we notice that the stay order was passed on 29-7-1995 directing the appellants to pre-deposit a sum of Rs. 1.25 lacs within a period of two months. The appellants had deposited only Rs. 25,000/-, therefore, the Tribunal after due consideration rejected their appeal for non-deposit. The appellants did not pre-deposit the amounts at all from the date of dismissal 29-7-1993 till 27-5-1998. This delay is required to be considered as to whether the appellants have bonafide reasons in not depositing the amounts. They have filed Miscellaneous application contending that the Govt. had issued Notification under Section 37B and on that ground sought for restoration of the appeal. The Tribunal in the above extracted order had clearly held that the Notification does not have a retrospective effect and the appellants were required to pre-deposit the balance amount as per the stay order. As the said amount had not been deposited, the Tribunal refused to restore the appeal and even after this order was passed on 15-10-1997, the appellants have not been diligent in pre-depositing the amounts as determined by the stay order. We have perused the bank statements and it is clear from the balance sheet that there was over-draft of

Rs. 30,00,000/- and the appellants have been utilising the said amount for all other purposes than for depositing the amount of Rs. 1,00,000/-, thereby clearly indicates lack of bona fides on the part of the appellants. The appellants have not shown bona fides in depositing the amounts from 1993 till 1998. Therefore, the judgments of the Tribunal rendered in the case of GTC Industries and the judgment of Hon'ble Supreme Court in the case of Nirlon Synthetic Fibres & Chemicals Ltd. directly apply to the facts of the present case. The Hon'ble Supreme Court had clearly noted that there has to be justification for restoration of appeal and if the party has not exercised the diligence, then the litigant should suffer, therefore, the Hon'ble Supreme Court refused to interfere with the order of High Court and dismissed the Writ Petition for default. The said judgment of Hon'ble Supreme Court clearly applies to the facts of the present case including the Tribunal's judgment rendered in the case of GTC Industries and Standard Audio & Video Pvt. Ltd., as there are no bona fides by the appellants and deliberately they have not pre-deposited the amounts from 1993 to 1998 and as the Tribunal had already rejected their appeal and refused to restore their appeal earlier, hence it is not proper for the Tribunal to exercise the jurisdiction to restore the appeal in this case. Hence, the restoration application is rejected.

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