

Rakesh G. Agarwal Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-28-2003

Reported in : (2004)(165)ELT530Tri(Mum.)bai

Judge : M T K.D.

Appellant : Rakesh G. Agarwal

Respondent : Commissioner of Central Excise

Judgement :

1. The Tribunal vide order dated 19-3-2003 dismissed the appellants appeal on noticing that there is no compliance of the order dated 2-1-2003 under which they were directed to make certain pre-deposits.

When the matter came before the Bench on 28th February, 2003 to verify the compliance, on that day, no one from the appellants was present.

The learned Counsel pleaded during the hearing today that the Tribunal order dated 2-1-2003 came to be passed ex parte, despite their request dated 19-12-2002 for adjournment. The Tribunal order does not disclose as to whether this application for adjournment was examined and the same was rejected. The learned Counsel therefore pleads that the request for adjournment has not been taken note of. So far as non-appearance on 28th February, 2003, it is pleaded that in the meanwhile they had submitted an application dated 22nd January, 2003 seeking modification of order dated 2-1-2003. The order of 19-3-2003 was passed

by the Tribunal dismissing the appeal for non-compliance.

2. The learned D.R. opposes the prayer of the appellants for restoration of the appeal and pleads that the application for modification of stay order can be deemed to have been heard by the Tribunal before the order dated 19-3-2003, was passed.

3. It appears that, the first order dated 2-1-2003 as well as subsequent order dated 19-3-2003 have been passed to ex parte. There is no discussion and finding on the merits of application for stay/modification. In the interest of justice, I feel that orders dated 2-1-2003 and 19-3-2002 are required to be recalled and the request for modification of stay order, deserves to be heard.

4. Accordingly, orders dated 2-1-2003 and 19-3-2002 are re-called. The appeal is restored. The registry is directed to place the miscellaneous application for modification of the stay order for hearing on 26th September, 2003.

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