B.E.S.T. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-04-2003

Reported in : (2004)(177)ELT592Tri(Mum.)bai

Judge : S T Gowri, K Kumar

Appellant : B.E.S.T.

Respondent : Commissioner of Central Excise

Judgement :

1. There is a delay of 316 days in filing this appeal. We are not able to accept the request for adjournment on the ground that the counsel of the applicant is out of station to day because he (or she) has to appear before the Supreme Court. No vakalanama has been filed. The appeal memorandum did not bear signature of any counsel. There is no request made by the advocate or authorised representative seeking adjournment. We therefore decline to adjourn.

2. We, after seeing the stay application and other papers and hearing the departmental representative, proceed with the matter.

3. The explanation for the delay, contained in the application for condonation of delay, is as follows: After receipt of the Commissioner's order on 4.6.2002, the application for review has been filed against his order on 10.7.2002 and followed with various reminders. It is contended that in terms of Section 14 of the Central Excise Act, central excise officers has the powers of civil court and enquiry before

such officers would be deemed to be judicial proceedings. Therefore, the provisions of the Code of Civil Procedure applicable to the officers and thus the review application is filed.

4. The order of the Commissioner itself makes it clear in the preamble that an appeal shall lay to the Tribunal against its order. Section 14 (1) refers to an inquiry made by the central excise officers or any of the powers of the Act and provides that officers shall have power to summon any person or to produce document or any other things.

Sub-section (2) makes it mandatory upon to such persons summoned to attend and state the truth. Proviso to Sub-section (2) provides that the exemption contained under Section 132 and 133 of the Code of Civil Procedure shall be applicable to such summons. Sub-section (3) provides that such inquiry shall be deemed to be a judicial proceeding in terms of Section 193 and 228 of the Indian Penal Code. It is thus clear that the section does not at all provide that the Commissioner adjudicating upon the matter in his court and the proceedings of the Code of Civil Procedure would apply. It is also not possible to say by any one, with reasonable knowledge of law, to come to this conclusion of this section. It is also to be noted that none of the application made to the Commissioner refers to any such provision. It is well settled that review under the Code of Civil Procedure is limited to, for example, such cases of error apparent from the record. Review proceedings are not by way of appeal. It is not possible for us to come to the conclusion that the applicant purportedly came to the conclusion. The appellant is a large organisation with sufficient access to expert legal advice. Hearing before the Commissioner was attended by the Assistant General Manager (Legal). In these circumstances, we do not find any ground to say that the appellant was prevented by sufficient cause in filing the appeal.

5. The application is therefore dismissed and consequently the appeal is dismissed as barred by limitation.