

**Jay Rapid Rollers Ltd. Vs. Cce**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-04-2004

**Reported in :** (2004)(96)ECC310

**Judge :** A T V.K., P Chacko

**Appellant :** Jay Rapid Rollers Ltd.

**Respondent :** Cce

**Judgement :**

1. This is an application by M/s. Jay Rapid Rollers Ltd. for restoration of their appeal which has been dismissed for non-compliance of pre-deposit as directed by the Tribunal, vide Final Order No.A/599/2002-NB dated 28.5.2002.

2. Shri J.S. Agrawal, learned Advocate, submitted that the Appellate Tribunal vide Stay Order No. S/341 /2002/NB-D dated 5.4.2002 directed the Applicants to deposit a sum of Rs. 5 lakhs on or before 22.5.2002; that they had moved an application for modification of the Stay Order which was rejected by the Tribunal vide Misc. Order No. M/136/2002-NB-D dated 28.5.2002 and also dismissed their appeal for non-compliance with the Stay Order; that the applicants thereafter moved a Civil Writ Petition No. 4199 of 2002 before the Hon'ble High Court of Delhi followed by CM-3819/2002 which came for final hearing on 14.1.2004; that the Hon'ble High Court was pleased to accept their request and ordered that the Applicants may approach the Hon'ble Tribunal by hearing of the appeal. The learned Advocate, further, submitted that in a similar matter on the same issue as

involved in the present appeal a demand of more than Rs. 8.76 crores has been dropped by the Commissioner under Order-in-Original dated 28.11.03; that therefore, the very applicability of Rule 57CC of the Central Excise Rules, 1944 become misconceived and void ab initio; that since the applicability of Rule 57CC was based on presumption that re-rubberizing is a manufacturing activity though exempted from payment of duty or chargeable to nil rate of duty which basis now ceases to exist and therefore the present demand ceases to be sustainable as a result the order passed on 24.8.2001 ceases to be enforceable as such pre-condition of 5 lacs may be waived.

3. Opposing the prayer Shri H.C. Verma, learned DR, submitted that it is an admitted fact that the applicants have not deposited Rs. 5 lakhs as directed by the Tribunal vide Stay Order dated 5.4.2002; that modification application was also rejected by the Tribunal, and their appeal was also rejected for non-compliance; that the Tribunal, however, in the interest of justice gave applicants liberty to apply for restoration of the appeal within 30 days from the date of deposit ordered to be deposited in the Stay Order provided the amount is deposited before 18.7.2000; that instead of depositing the amount of applicants had filed writ petition in the Hon'ble High Court; that the learned Sr. Counsel for the Applicants sought leave of the Hon'ble High Court of Delhi to withdraw the application with liberty to approach the Tribunal for modification of Order dated 5.4.2002 and 28.5.2002; that the High Court accordingly dismissed the application as withdrawn with liberty as prayed. The learned DR emphasized that the High Court has nowhere ordered the Applicants to approach the Hon'ble Tribunal. He, finally, mentioned that a subsequent decision by the Commissioner is not material for considering the appeal which stands already dismissed for non-compliance; that in fact, the matter stands decided against them in their own case as reported in 2000 (40) RLT 62 (CEGAT).

4. We have considered the submissions of both the sides. It is an admitted fact that the Tribunal after hearing the Applicants on 5.4.2002 did not find a prima facie case in their favour and directed them to deposit a sum of Rs. 5 lakhs on or before 22.5.2002. As they did not deposit the said amount the Tribunal did not find any merit in their Misc. application for modification of the Stay Order and their appeal

was dismissed vide Final Order No. A-599/2002-NB-D dated 28.5.2002. The Appellate Tribunal, however, given them liberty to apply for restoration, if they deposit the sum ordered to be deposited before 18.7.2002 which also has not been done by the Applicants. A subsequent order passed by the Commissioner, Central Excise cannot make the orders passed by the Tribunal non-applicable. If they are aggrieved with the Stay Order or dismissal of their appeal for non-compliance the remedy available to the Applicants was to approach the higher Appellate forum.

We observe that the Applicants have approached the Hon'ble High Court of Delhi. However, there also they sought leave to withdraw the application with liberty to approach the Tribunal for modification of the Order. The High Court has dismissed their application as withdrawn with liberty as prayed. The learned DR has rightly emphasized that there is no order by the High Court that they should approach the Tribunal for hearing of the appeal. As the Applicants had not complied with the Stay Order passed by the Tribunal their appeal was dismissed and there is no reason for restoring their appeal merely because in a subsequent order the Commissioner has taken a different view. We, therefore, reject the application.

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