

Executive Engineer Tubewell Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-05-2004

Reported in : (2005)(99)ECC27

Judge : A T V.K., P Bajaj

Appellant : Executive Engineer Tubewell

Respondent : Commissioner of Central Excise

Judgement :

1. This is an application filed by M/s. Executive Engineer, Tubewell Division for restoration of appeal dismissed by the Appellate Tribunal vide Final Order No. E/974/98-B1 dated 16.6.98 for non-appearance on the date of hearing.
2. Shri Anil Mittal, learned Advocate, submitted that during the period of the Appeal was pending before the Tribunal the office of Tubewell division was divided into two by the Government of UP and both the Divisions were allotted to different offices; that the present Appeal in question was assigned to Executive Engineer Division I; that the notice sent by the Tribunal for hearing on 16.6.98 was received by the office of the Tubewell Division II; somehow either the notice was misplaced or for some other reason the notice did not come to the notice of the Division I and as such the appearance could not be made before the Tribunal; that the Tubewell Division-I came to know about the dismissal Appeal through Tubewell Division II and immediately they had sought the advice from the District Govt. Counsel, Kanpur to know about the further course of action. Thereafter, the matter was

discussed with District Government Counsel, Kanpur who opined that either the application for restoration should be filed at Delhi or a second application may be filed before Deputy Collector, Kanpur for hearing the matter; that after obtaining requisite permission from Chief Engineer an application dated 25.2.02 was filed before the Collector, Central Excise, Kanpur who refused to accept the same; that after further, discussions it was decided to file a writ petition in Delhi High Court; that when the matter was discussed with the advocate at Delhi, he advised that an application has to be filed before the Appellate Tribunal in his letter dated 10.12.03; that in view of these developments and matter being pursued at various official levels, the application for restoration of Appeal could be filed only in February 2004. Learned Advocate, further, submitted that non-appearance on behalf of the Appellants on 16.6.98 was neither intentional nor with an ulterior motive; that the Appellant was prevented by sufficient cause for (sic, from) appearing before the Tribunal as they did not receive the notice of that date due to change of address; that delay in filing the present application is neither intentional and time was consumed in administrative action of taking permission from one authority and the other.

3. Shri Vikas Kumar, learned Senior Departmental Representative, opposed the application by submitted that the Appeal was dismissed for non-appearance in June 1998 and the appellants have taken more than 5 1/2 years in approaching the Tribunal for restoration which shows their interest in pursuing the Appeal; that the delay in filing the application is not reasonable and the Applications, therefore, should be rejected.

4. We have considered the submissions of both the sides. The appeal was dismissed for non-appearance by the appellants on 16.6.98 inspite of notice sent to the Appellants. We also observe that even earlier when the matter was posted for hearing on 22.4.98, none had appeared on behalf of the Appellants. Further, after coming to know about the dismissal of Appeal in 1998, the appellants have taken more than 5 1/2 years to approach this Tribunal for restoration of Appeal. The Explanation given by them for filing the present application does not provide sufficient cause for considering any application filed after such a considerable lapse of time. We also observe that the District Government Counsel Kanpur

under letter dated 4.12.98 had given his opinion to the appellants and first action in pursuance of that opinion was taken by the appellants only on 25.2.02, that is after more than 3 years which shows complete lack of interest in pursuing the matter. We, therefore, find no merit and reject the application.

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