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Collector of Central Excise Vs. Jay Engineering Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-26-1991

Reported in : (1991)LC334Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Jay Engineering Ltd.

Judgement :

1. The above-captioned appeal was dismissed for non-prosecution vide order No. 267/91-A dated 9th May, 1991. By the present application, the applicants have made a prayer for the recalling of the order passed by the Tribunal. Shri A.K. Singhal, the learned JDR has appeared on behalf of the appellant. He pleaded that the original adjudication was done by the Assistant Collector, Hyderabad. Shri Singhal pleaded that the matter is very old one and is a review show cause notice issued by the Department to be treated as an appeal. The appellant could not get the necessary papers due to reorganisation of the divisions from time to time. This resulted in the delayed submissions of the papers. He pleaded that there is no wilful neglect or omission on the part of the appellant and the appellant was prevented by sufficient cause for non-prosecution. He pleaded for the recalling/restoration of the appeal.

2. Shri P.K. Ram, the learned advocate who has appeared on behalf of the respondent stated that in view of the earlier decisions of the Tribunal, he has got no objection to the restoration of the appeal and he leaves it to the discretion of the Bench.

3. We have heard both the sides and have gone through the facts and circumstances of the case. The appeal was dismissed for non-prosecution. In the earlier decision of the Tribunal in the case of Collector of Central Excise, New Delhi v. Leatherite Industries Ltd. reported in 1985 (21) ELT 590 (Tribunal) it was held that for non-compliance of procedure rules and lapse on the part of the appellant for not producing of the paper book, there was no justification for the dismissal of the appeal. Paras 8 to 13 from the said judgment are reproduced below:- "8. The question arises whether depriving a party of his right of hearing on merit would be justified for non-compliance of the Procedure Rules? 9. Hon'ble Supreme Court has answered this question in a decision given in the case of Kalipada Das and Ors. v. Bimal Krishna Sen Gupta reported in 'All India Reporter 1983 Supreme Court 876' wherein the Lordship of the Supreme Court held - "Supplying paper-books is a procedural requirement devised to facilitate rendering justice. In other words, it is a procedural step in aid of justice and not substantive justice itself. Undoubtedly, Court's orders have to be obeyed. The institution of judiciary may not be able to function if there is no sanction behind the Court's order.

But penalty of failure to comply with Court's order providing a procedural stage in aid of justice must be commensurate with the gravity of the lapse. If the penalty imposed is disproportionate to the gravity of the lapse or omission, the procedural stage instead of becoming a step in aid of justice would be a road block to justice." 10. Keeping in view this proposition of law as laid down by Hon'ble Supreme Court, we have to find out whether this lapse on the part of the Department/applicant warrants such a penal action like dismissing its Appeal for non-compliance of the order of the Tribunal in not producing the paper-books in time.

11. As perusal of the record shows that though the Department/applicant is negligent and careless in not obeying the order of the court in as much as the letter written by the Departmental representative to the Collector concerned for compliance of the order of the Tribunal yielded no fruit.

12. The Departmental officials particularly Collectors concerned should be vigilant enough to see that the orders of the Tribunal are complied with immediately in the aid of justice. In this case, the Collector concerned has now complied with the directions of the Tribunal in filing paper-books as far back as on 21-9-1984. Though he has taken a lot of time to comply with the directions but in view of the explanation given by him that the file containing the papers was somehow detached from the case file and it remained untraced in spite of persistent efforts made by the Department is sufficient enough to restore the Appeal to its original number.

13. Under the circumstances, we hereby restore this appeal to its original number. The date of hearing be communicated to the parties as per the availability of the date in the working diary of the Bench keeping in view the fact that this appeal is of the year 1978." Hon'ble Supreme Court in the case of ITO v. Mohd. Kunhi reported in 1969 SC 430 had held that the Tribunal has got inherent powers. We are of the view that it is a fit case where we should exercise our inherent powers. We recall the earlier order passed by the Tribunal and restore the appeal to its original number. The appeal to be heard on merits on 18th November, 1991.

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