

Commissioner of Central Excise Vs. Bluemax Sport Wear

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SooperKanoon Citation : sooperkanoon.com/696894

Court : Delhi

Decided On : May-05-2005

Reported in : 120(2005)DLT429; 2005(82)DRJ584; 2005(103)ECC107; 2005(186)ELT399(Del)

Judge : Swatanter Kumar and; Madan B. Lokur, JJ.

Acts : [Central Excise Act, 1944](#) - Sections 35H

Appeal No. : CEAC 03/2005 and CM 1228 and 1229/2005

Appellant : Commissioner of Central Excise

Respondent : Bluemax Sport Wear

Advocate for Def. : C. Harishankar and ; Jagdish N., Adv.

Advocate for Pet/Ap. : A.K. Bhardwaj, Adv

Judgement :

Madan B. Lokur, J.

1. The Appellant has filed CM No. 1228 seeking condensation of delay in filing an appeal under Section 35H of the [Central Excise Act, 1944](#) (the Act). CM No. 1229/2005 is an application seeking condensation of delay in re-filing the appeal after removal of objections raised by the Registry.

2. Strangely, the averments in both the applications are absolutely identical and it appears that they have been filed without any application of mind.
3. The Appellant is aggrieved by an order dated 23rd April, 2002 passed by the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi (CEGAT). It is stated that the order was received by the Appellant on 15th May, 2002. The period of limitation for filing an appeal in this Court is six months. After expiry of the period of limitation, the present appeal was filed on 17th December, 2002.
4. The Registry of this Court raised objections that the appeal and the application have been filed without a supporting affidavit being attested or even dated. We are of the view that in the absence of any appropriate affidavit in support of the appeal under Section 35H of the Act or even the application seeking condensation of delay, the filing on 17th December, 2002 was totally inappropriate, apart from being even otherwise delayed by 96 days, as stated by the Appellant.
5. For almost two years after the Registry raised objections, nothing seems to have happened from the side of the Appellant. Eventually, on 21st October, 2004, the Commissioner of Central Excise signed the affidavit, which was attested on 12th January, 2005. In other words, apart from a delay of 96 days in filing the appeal, there was a delay of more than two years in refiling the appeal.
6. The only reason given by the Appellant for the delay in filing and refiling the appeal is that there were frequent transfer of officers dealing with the matters (not necessarily this matter) and the resultant communication gap between the counsel and department. It was also said that delay was compounded by 'lack of appreciation of the process involved in review of the legal matters'.
7. We were not at all satisfied with the Explanation proffered and so we directed learned counsel for the Appellant to produce the original record. The original record has not been produced but photocopies of some files have been placed before us. A perusal of these files shows that there is absolutely no indication who dealt with the files, who tried to contact the counsel for the Appellant and what was the reason for the communication gap, if any.

8. Ordinarily, we would not have taken a serious view of the delay in re-filing the appeal but we find that this has become a habit with the Commissioner of Central Excise and his office seems to be incorrigible. We have had to deal with two other similar cases wherein applications for condensation of delay troop out the same excuse.

9. If the Commissioner of Central Excise is not serious about the cases being conducted by his department, there is no reason for him to waste everybody's time including the time of the Registry of this Court and Judges dealing with these kind of matters. Even the Respondent-litigants suffer a tremendous amount of inconvenience, apart from expenses for engaging an advocate and contesting the matter.

10. There is no reason why the Appellant should be treated with a kid gloves and why delay in not processing this case should not be viewed seriously. Rather than minimizing Government expenditure, the Appellant is succeeding in increasing this expenditure apart from causing inconvenience to scores of people.

11. Since we are not at all satisfied with the Explanationn given by the Appellant, the application for condensation of delay in filing the appeal under Section 35H of the Act and condensation of delay in re-filing the appeal are dismissed with costs of Rs. 5,000/-, which will be paid by the Appellant to the Respondent for the harassment caused.