

Commissioner of Central Excise Vs. Rgl Convertors

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Court : Delhi

Decided On : May-05-2005

Reported in : 120(2005)DLT111; 2005(82)DRJ581; 2005(191)ELT145(Del)

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

Acts : Limitation Act - Sections 5; [Central Excise Act, 1944](#) - Sections 35H

Appeal No. : CEAC 1/2005 and CM 152 and 153/2005

Appellant : Commissioner of Central Excise

Respondent : Rgl Convertors

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 152/2005, which is an application under Section 5 of the Limitation Act for condoning delay in filing an appeal under Section 35H of the [Central Excise Act, 1944](#) (the Act). CM 153/2005 is an application for condoning delay in re-filing the appeal.

2. The case reveals an extremely sorry state of affairs coupled with incorrect affidavits being filed by the Appellant to somehow or the other get the delay condoned. That the Commissioner of Central Excise should indulge in such a practice is all the more shocking.

3. The Customs Excise and Gold (Control) Appellate Tribunal (CEGAT) passed an order dated 13th March, 2003. It is stated in the application for condensation of delay that the order is dated 17th March, 2003 but that hardly matters because admittedly the order was received by the Appellant on 7th April, 2003.

4. The limitation period for filing an appeal under Section 35H of the Act is six months. Consequently, the appeal should have been filed on or about 7th October, 2003 but was actually filed on 28th September, 2004 under Filing No. 30401.

5. The application for condensation of delay wrongly states that the appeal was filed on 7th April, 2004 and that there is a delay of 198 days in filing the appeal. As already mentioned, the appeal was filed on 28th September, 2004 and not on 7th April, 2004. The application for condensation of delay, therefore, contains a false averment. The record of the case shows that the affidavit of the Commissioner of Central Excise was attested on 28th September, 2004, which is the date on which the appeal was fled. It is, therefore, extremely unfortunate that the application for condensation of delay wrongly mentions the date of filing, advancing it by almost six months.

6. The application for condensation of delay mentions that the delay has occurred due to frequent transfers of officers dealing with the matter (not necessarily this matter) and resultant communication gap between the counsel and the Department. It is mentioned that the Appellant is the Union of India and the accompanying application involves huge amount of public exchequer and that delay occurred due to unavoidable circumstances and a communication gap between the officers and counsel.

7. There are no particulars whatsoever in the application for condensation of delay about the transfers that have taken place and the nature of the communication gap between the counsel and Department. It is also not explained, if the appeal

involves a huge amount of public exchequer, why was not the appeal processed for filing with appropriate promptitude and due dispatch.

8. The Appellant has also filed CM 153/2005 which is an application for condensation of delay in re-filing the appeal under Section 35H of the Act. In fact, there is no delay in re-filing the appeal under Section 35H of the Act and the application for condensation of delay in re-filing has been filed mechanically, without any application of mind and containing the same averments as CM 152/2005.

9. Under these circumstances, we called upon learned Government counsel to produce the records before us to justify the averment that there had been frequent transfers and a resultant communication gap between the departmental officers and counsel.

10. A perusal of the file produced before us shows that the draft for filing an appeal in this Court was approved by the concerned Commissioner on 22nd September, 2003, that is, within the limitation period. On or about 6th October, 2003, a request was made to the Litigation Section of the Government in the High Court to engage an advocate for filing the appeal.

11. On 21st April, 2004, that is, after a gap of six months it was noted that a letter intimating the appointment of a Government advocate to file the appeal had not yet been received from the Litigation Section of the Government in the High Court. What happened between October, 2003 and April, 2004 is not known because there is no noting in this regard. Who was the officer dealing with the file during this period is also a complete mystery.

12. Surely, if a huge amount of public money was involved in the case, as is sought to be made out by the Appellant, some urgency should have been shown and the movement of the file properly monitored. Even from April, 2004 onwards until September, 2004 when the appeal was actually filed, there are inconsequential nothings in the file, which do not seem to show any urgency nor do they indicate any so-called frequent transfers and lack of communication with counsel. On the contrary, it appears that ever time an officer went to meet the

counsel he was able to meet him and discuss the matter with him.

13. The legislature has already given six months time to the Appellant to approach the High Court against an order of the CEGAT. By any standard, this is a long period and it is only after this that delay begins to occur. As already mentioned, in spite of this large time gap of six months available to the Appellant, almost one more year went by before the appeal was actually filed. This extremely casual and cavalier approach of the Appellant shows that it was not at all serious in the matter and has just put up some sort of an excuse so that being the Union of India, the Court may be inclined to condone the delay.

14. Every case costs a lot to a litigant in terms of time, effort and money. The Union of India may not be concerned with what expense a litigant would incur but surely a litigant is concerned with what expenses he will have to incur in a case. Merely approaching a Court sometimes causes harassment to a litigant. The casual approach and practice adopted by officers of the Union of India in dealing with this case is one such instance. If nothing else, the Courts have to be vigilant in this regard and protect the interests of an ordinary litigant. It is not possible to ignore the anxiety that may be caused to a litigant who is told after 1--+ years that he is required to face a litigation, which he thought had come to an end a long time back.

15. The bogey that the Appellant has set up about a loss to the public exchequer is nothing but a bogey. If there was even an iota of truth in it, surely officers of the Appellant would have taken some interest in pursuing the litigation with appropriate dispatch and seriousness. This is completely lacking in this case and we are not going to fall for an appeal to misplaced sympathy made by learned counsel for the Appellant.

16. To make matters worse, an incorrect affidavit has been filed by the Commissioner of Central Excise and this certainly ought not to be tolerated under any circumstances.

17. Consequently, we find absolutely no reason to condone the delay in filing the appeal, the application having been filed on wrong facts. The application is,

thereforee, dismissed with costs of Rs. 5,000/- which will be paid within one month by the Appellant to the Respondent for the harassment caused. The Appellant will also deposit within one month with the Delhi Legal Services Authority a sum of Rs. 5,000/- as costs for trying to mislead this Court by filing a false affidavit. After the costs are paid as above, the Appellant will be entitled to recover it from the officer(s) responsible for the delay.

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