

Hamerlal Jain Vs. Commr. of Central Excise and ors.

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Court : Delhi

Decided On : Jun-02-2006

Reported in : 131(2006)DLT125; 2006(204)ELT28(Del); 2008[10]STR508; [2009]19STT85

Judge : T.S. Thakur and; Shiv Narayan Dhingra, JJ.

Acts : Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 - Rule 20

Appeal No. : W.P.(C) No. 3518/2005

Appellant : Hamerlal Jain

Respondent : Commr. of Central Excise and ors.

Advocate for Def. : Amit Gupta, Adv.

Advocate for Pet/Ap. : Prateek Kumar, Adv

Disposition : Petition allowed

Judgement :

T.S. Thakur, J.

1. Customs, Excise and Service Tax Appellate Tribunal has declined to restore the petitioner's appeal dismissed by it for non-prosecution. Aggrieved the petitioner

has assailed the correctness of the said order in this petition.

2. The petitioner was, during the relevant period, engaged in manufacture of brass ingots from out of brass dross imported from outside the country or purchased from the indigenous market. Pursuant to a show cause notice served upon the petitioner, the adjudicating authority determined an amount of Rs.12,80,613/- towards basic duty and a sum of Rs.2,989.97 towards special duty as payable by the petitioner. A penalty of Rs.1,00,000/- was also at the same time levied upon the petitioner. Aggrieved by the said order, the petitioner preferred an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT), Bombay who passed an order on 29th November, 1990 directing the petitioner to pre-deposit a sum of Rs.2,00,000/- and to furnish a bank guarantee for a sum of Rs.4,00,000/- within the time stipulated by it failing which the appeal filed by the petitioner was liable to be rejected. Pre-deposit of the balance amount of duty and penalty was, on that condition, waived.

3. The petitioner's case is that he had, pursuant to the direction aforementioned, deposited a sum of Rs.2 lacs in terms of a challan, a copy whereof has been produced as Annexure P-2 to the petition. His further case is that a bank guarantee for the requisite amount was also obtained and furnished to the Superintendent, Central Excise, Bombay within the time stipulated by the Tribunal. According to the petitioner, he had informed his consultant about the payment of the amount of duty and the furnishing of the bank guarantee and was under the impression that the consultant would faithfully report the same to the Registry of the Tribunal. Unfortunately, however, the consultant does not appear to have done the needful till the time of his death some time in the year 2001. In the meantime, the petitioner received an intimation from the Tribunal pointing out that the appeal stood transferred to the CESTAT at Delhi. The manufacturing activity was also stopped by the petitioner who claims to have informed the Registry of the CESTAT at Delhi about the change of his address in terms of a communication dated 10th August, 1996.

4. According to the petitioner, no notice alleging non-compliance of the order passed by the Tribunal nor any notice of hearing of the matter before the Tribunal

at Delhi was ever received by the petitioner. On the contrary, letter dated 26th August, 2003 from the Superintendent of Central Excise received by the petitioner on 2nd September, 2003 called upon the petitioner to renew the bank guarantee as the same had expired. A copy of the said letter has also been enclosed by the petitioner as Annexure P-8 to the petition. The petitioner immediately renewed the bank guarantee up to 5th September, 2005 and informed the Superintendent about the same in terms of a letter dated 8th October, 2003. The petitioner alleges that when he inquired about the status of the appeal filed by him from the Superintendent of Central Excise, Range-IV, Division K-1, the Superintendent expressed ignorance about the same and directed the petitioner to contact the Divisional Office of K-1, Old Customs House, Bombay. Inquires from the Customs House, Bombay however led to the service of a copy of the order of the Tribunal dated 11th June, 1998 by which the petitioner's appeal was dismissed by the Tribunal for non-prosecution.

5. The petitioner immediately thereafter filed an application seeking restoration of the appeal inter alia contending that the dismissal of the appeal for the alleged non-compliance with the directions issued by the Tribunal was unjustified as the conditions stipulated by the Tribunal had been fully complied with and even the bank guarantee extended up to the year 2005. It was also contended that no notice regarding the hearing of the appeal filed by the petitioner had been served upon it to justify dismissal of the appeal for non-appearance of the petitioner. The Tribunal, however, did not find favor with those contentions and dismissed the application filed by the petitioner by order dated 31st March, 2004. The twin grounds which prevailed with the Tribunal were :

(i) A notice regarding the hearing of the appeal was sent to the petitioner by registered post on 11th June, 1998 on which date, nobody had appeared on behalf of the petitioner resulting in the dismissal of the appeal in terms of Rule 20 of the CEGAT (Procedure) Rules, 1982, and;

(ii) There was a delay of five years in the making of the application which the petitioner had failed to explain.

6. Aggrieved by the order passed by the Tribunal, the petitioner filed a writ petition in the High Court of Bombay which was subsequently dismissed as withdrawn by the said Court in terms of an order dated 20th January, 2005. A reading of the said order would show that the petition was allowed to be withdrawn as the appeal was at the time of its dismissal pending before the Customs, Excise and Service Tax Appellate Tribunal, New Delhi and in the event of the same being restored, shall have to be heard by the Tribunal at Delhi. The petitioner was, therefore, given liberty to file an appropriate writ petition before this Court. That is precisely how the present writ petition has been filed by the petitioner in this Court.

7. Appearing for the petitioner, Mr. Prateek Kumar argued that the dismissal of the appeal filed by the petitioner was, in the circumstances of the case, unjustified. He urged that the reasons given by the Tribunal while refusing to restore the appeal did not stand closer scrutiny. He submitted that there was a full and proper compliance with the direction issued by the Tribunal in so far as the deposit of the amount and furnishing of bank guarantee was concerned. Intimation about the deposit and furnishing of the bank guarantee had been duly given to the Superintendent, Central Excise concerned. The Tribunal was not, therefore, justified in holding that there was a non-compliance with the orders passed by it. The departmental representative appearing before the Tribunal ought to have pointed out that there was a proper compliance with the directions of the Tribunal. The second reason, viz., that the petitioner had not appeared despite a notice regarding the hearing of the appeal was also according to the learned Counsel insufficient both for dismissal of the appeal as also for refusing to restore the same. No notice regarding the hearing of the case was, according to the learned Counsel, proved to have been served upon the petitioner. There was, in any case, no question of service of a notice at an address which had changed and an intimation regarding which change had already been sent to the Tribunal. It was not the case of the respondents that the notice allegedly sent to the petitioner was on the changed address nor was there any acknowledgement on record showing service of such a notice.

8. There is, in our opinion, considerable merit in both these submissions made by learned Counsel for the petitioner. The documents placed on record amply prove

that the order passed by the Tribunal regarding pre-deposit and furnishing of bank guarantee had been complied with by the petitioner within the time stipulated for the purpose. The Tribunal was not, therefore, correct in holding that there was non-compliance with the said directions. In any event, the departmental representative appearing before the Tribunal ought to have pointed out the true facts to the Tribunal to avoid injustice to the petitioner. So also the service of notice regarding hearing of the appeal does not appear to have been served upon the petitioner or his counsel. Counsel for the petitioner had, in any case, passed away somewhere in the year 2001. That was one other reason why there was a communication gap between the petitioner and the Tribunal. The fact that there was a change in the address of the petitioner is also evident from the communication sent by the petitioner to the Tribunal which remains unrebutted. In the totality of these circumstances, therefore, the dismissal of the appeal for non-prosecution was not justified. The order passed by the Tribunal should have been recalled and the appeal heard and disposed of on merits.

9. It is true that the application for restoration was filed after a few years of the dismissal order but the circumstances in which the delay occurred cannot be ignored. The circumstances in fact go to establish that the petitioner was all along under a bona fide impression that the appeal was pending. That is precisely why he had extended the bank guarantee till the year 2005 in complete ignorance of the fact that the appeal itself stood dismissed in the year 1998. Even the Department had given that impression to the petitioner while demanding a renewal of the bank guarantee for otherwise there was no justification for the Department to demand a renewal. The petitioner could no doubt have been a little more vigilant in pursuing and keeping track of the matter. Engaging a counsel to handle a case before a court or tribunal is not enough. All the same, the circumstances in which the dismissal took place and the intervening developments like the transfer of the appeal from Bombay to Delhi, death of the counsel for the petitioner, change of the address of the petitioner and non-service of notices etc. make out a case for restoration of the appeal.

10. We accordingly allow this writ petition; set aside the order dated 31st March, 2005 passed by the Tribunal and allow the petitioner's application for restoration of

the appeal subject to payment of Rs.5,000/- as costs. The cost shall be deposited by the petitioner in the Delhi High Court Advocates Welfare Fund within a period of two months. The petitioner shall also keep the bank guarantee furnished in terms of the Tribunal's order extended till such time the appeal is finally heard and disposed of. The petitioner shall appear before the Tribunal for further directions on 4th September, 2006. It is made clear that in case the petitioner fails to comply with any one of the directions given hereinabove, the Tribunal shall be free to pass appropriate orders in accordance with law. No costs.

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