

C.C.E Vs. Laxmi Oils and Vanaspati P. Ltd Saurabh Gupta, Director

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-02-2012

Judge : The Honourable Mr Justice Ajit Bharihoke, President & the Honourable Mr Justice Rakesh Kumar, Technical Member

Appeal No. : Condonation Application No.474-475 of 2011

Appellant : C.C.E

Respondent : Laxmi Oils and Vanaspati P. Ltd Saurabh Gupta, Director

Advocate for Pet/Ap. : Present for the Appellant: N. Pathak, A.R. Present for the Respondent: None.

Judgement :

Per Mr. Justice Ajit Bharihoke (Oral):

1. Vide this order we propose to dispose of two applications for condonation of delay of one year seven months in filing of appeals by the Department against the order of Commissioner (Appeals) dated 29.3.2010 whereby he accepted the appeals respectively filed by M/s Laxmi Oils and Vanapati P. Ltd. and Shri Saurabh Gupta, Director of the said company.

2. The cause shown for delay in filing of above appeals by the Department is that the impugned order was passed by the Commissioner (Appeals) following the ratio of the judgment of the Tribunal in the matter of CCE, Hyderabad vs. Priyanka

Refineries Ltd. reported in 2010 (249) E.L.T. 70 (Tri. Bang.), it is alleged in the applications that the department had preferred civil appeals No. 218-220 of 2010 against the judgment of the Tribunal in CCE, Hyderabad vs. Priyanka Refineries Ltd. (supra), the SLP, however, was dismissed by the Honble Supreme Court on 7th of January 2010. When the matter was considered by the Committee of Commissioners, the Committee decided not to file appeal against the impugned order for the reason that the order in CCE, Hyderabad vs. Priyanka Refineries Ltd. (supra) was confirmed by the Hon'ble Supreme Court. It is further alleged that subsequently in the matter of CCE, Jalandhar vs. A.G. Flats Ltd., the Tribunal vide final order No. 648-661 of 2011-EX dated 25/7/11 and also reported in 2012 (277) E.L.T. 96 (Tri. Del.) took the view that dismissal of civil appeals In-Limine by the Hon'ble Supreme Court without adverting to the facts and without giving reasons could not be taken as the law laid down by Hon'ble Supreme Court. As such, in view of the clarification of legal position by the Tribunal in the matter of CCE, Jalandhar vs. A.G. Flats Ltd. (supra), the Department has decided to prefer appeal against the impugned order. It is submitted that the delay in filing of appeal has resulted because of mistaken interpretation of the dismissal of Civil appeal against the order in CCE, Hyderabad vs. Priyanka Refineries Ltd. (supra).

3. Shri Nagesh Pathak, learned Authorised Representative for the appellant submits that the Committee of Commissioner earlier decided not to prefer appeal against the impugned order under the impression that summarily dismissal of Civil Appeal against the order of the Tribunal in the case of CCE, Hyderabad vs. Priyanka Refineries Ltd. amounted to laying down of law.

4. Notice issued to the respondent at his correct address have been received back undelivered with the report that he is not available on the given address. From the service report it appears that the respondent is avoiding service, thus, we have proceeded ex parte.

5. We have considered the submissions made by Shri Nagesh Pathak, learned A.R. for the appellant. Only explanation given for delay in filing of appeals is that the Commissioner (Appeals) decided not to prefer appeal under the mistaken belief that while dismissing the Civil Appeal filed by the Department in- limine in

the matter of CCE, Hyderabad vs. Priyanka Refineries Ltd. (supra), the Supreme Court laid down the law inasmuch as approving legal position settled by the Tribunal in the aforesaid case. This explanation in our considered view is not sufficient to condone the delay for the reason that the Committee of Commissioners had accepted the impugned order after considering the factual and legal aspect. Once the Committee of Commissioners have decided not to prefer appeal against the impugned order, the order has attained finality. As such, the issue now cannot be reopened only because in a subsequent judgment, the Tribunal has taken view that in-limine dismissal of appeal by the Supreme Court does not lay down any law.

6. In view of the discussion above, we do not find merit in the applications for condonation of delay. Accordingly, the applications are dismissed.

Excise Appeal No.2990-2991 of 2011

In view of dismissal of applications for condonation of delay the appeals are dismissed as time barred.

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