
2010 eGLR_HC 10005171

Before the Hon'ble MR D A MEHTA, JUSTICE the Hon'ble MS H N DEVANI, JUSTICE

**L J SYNTHETIC MILLS THROUGH PROPRIETOR JIVATRAM L DARIYANI Vs. COMMISSIONER OF
CENTRAL EXCISE AHMEDABAD - I - OPPONENT(S)**

TAX APPEAL No: 1611 of 2009 , Decided On: 31/03/2010

Kunal Nanavati, Nanavati Associates, Y.N.Ravani

MS.JUSTICE H.N.DEVANI

1. Both these appeals arise out of common order dated 24th April 2002 made by the Customs, Excise & Gold (Control) Appellate Tribunal as well as common order dated 17th June 2009 made by the Customs, Excise & Service Tax Appellate Tribunal, hence, both the appeals were heard together and are disposed of by this common order.

2. In these two appeals under section 35G of the Central Excise Act, 1944 (the Act), the appellants have proposed the following question:

"Whether the Honble CESTAT has the power to dismiss the appeal for non appearance of the appellant and also to dismiss the application for restoration of the appeal made by the appellant?"

3. In Tax Appeal No.1611 of 2009 the appellant is M/s L.J. Synthetic Mills through its proprietor-Jivatram Laxmandas Dariyani whereas in Tax Appeal No.1695 of 2009 the appellant is Shri Jivatram Laxmandas Dariyani.

4. The appellant-Mill was running a textile processing unit wherein various varieties of fabrics were subjected to processes like bleaching, dyeing, finishing etc. The officers of the Central Excise Department visited the appellants factory on 13th November 1998, pursuant to which a show cause notice dated 8th January 2001 came to be issued by Commissioner of Central Excise-I, Ahmedabad, alleging that central excise duty of Rs.23,49,439/- was leviable on illicit clearance of MMF. The show cause notice came to be adjudicated vide Order-in-Original dated 27th August 2001, which came to be served upon the appellants on 22nd November 2001.

5. Being aggrieved, the appellants preferred appeals before the then Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) on 8th February, 2002 along with applications for stay. The stay applications were taken up for hearing by the CEGAT on 24th April 2002. Vide order dated 24th April 2002, the CEGAT took note of the fact that telegraphic notices had been sent for hearing which had been received back with postal remarks "addressee left without leaving address" and dismissed the stay applications along with the appeals for want of address of the appellants.

6. The appellants moved applications for restoration before the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal) on 5th March 2009. Vide order dated 17th June 2009, the Tribunal rejected the restoration applications.

7. Mr. Kunal Nanavati, learned advocate for the appellants has submitted that the Tribunal has erred in law in dismissing the appeals for non-appearance of the appellants as well as in dismissing the applications for restoration of the appeals made by the appellants. It was submitted that it was only on account of sickness of Shri Jivatram Laxmandas Dariyani, that the change of address could not be communicated to the authority. It was contended that the Tribunal has no power to dismiss an appeal for non-appearance of the appellant and that, even in absence of the appellants, the appeals ought to have been decided on merits. In support of his submissions, the learned advocate has placed reliance upon a decision of this Court in *Viral Laminates Pvt. Ltd. v. Union of India*, 1998(2) GLH 21.

8. From the facts noted hereinabove, it is apparent that the appellants had challenged the order dated 27th August 2001 made by Commissioner on 8th February 2002 by way of appeals before the CEGAT. The appellants also filed stay applications along with the appeals. When the stay applications were called out for hearing there was no appearance on behalf of the appellants. Notices for hearing of stay applications had been received back with postal remark "Adressee left without leaving address". Since the appellants had not furnished new address CEGAT was of the view that no useful purpose would be served in adjourning the cases and accordingly vide the impugned order dated 24th April, 2002 dismissed the appeals along with the stay applications.

9. Subsequently, after a period of seven years thereafter, the appellants moved applications for restoration of the appeals. The said applications came to be dismissed by the Tribunal observing that as regards huge gap of seven years in filing the restoration applications, the learned advocate had simply stated that the sole owner of the unit was unwell and was unable to conduct the affairs of the manufacturing unit in the usual manner. The Tribunal found that apart from the said bald statement made in the applications, there was nothing to reflect on the difficulties faced by the appellants in presenting the applications for restoration of the appeals dismissed in the year 2002. The Tribunal also noted that no medical certificate showing serious illness of Shri Dariyani had been placed on record. Agreeing with the contention of the learned D.R. that even presuming that Shri Dariyani was not well, the applications could have been filed by the authorized representative who was looking after the affairs of the

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company, the Tribunal observed that this was a clear case of laches on the part of the appellants and accordingly, held that delay of a huge period of seven years cannot be condoned and rejected the applications on the ground of laches on part of the appellants.

10. In these appeals, the appellants have challenged the order dated 24th April 2002 made by the CEGAT as well as the order dated 17th June 2009 made by the Tribunal.

11. Section 35G of the Act provides for "Appeal to High Court". Clause (a) of sub-section (2) thereof provides that such appeal shall be filed within 180 days from the date on which the order appealed against is received by Commissioner of Central Excise or the other party.

12. Insofar as the order dated 17th June, 2009 is concerned, the appeals have been filed within the prescribed period of limitation as provided under section 35G of the Act. However, insofar as the order dated 24th April 2002 made by the CEGAT is concerned, the appeals are hopelessly time-barred. The record of the case indicates that no application seeking condonation of delay caused in filing of the appeals qua the said order have been filed by the appellants. The appellants have merely stated in paragraph 2 of the appeal memos that the impugned judgement and order against which the present appeals are filed, is dated 17th June 2009 and the same has been received by the appellant on 25th June 2009 and therefore, the present appeals are filed within the period of limitation provided under section 35G of the Act. However, in the relief clause, the appellants have also challenged the order dated 24th April 2002 made by the CEGAT and the question of law framed by the appellants also pertains partly to the said order. A perusal of the memo of appeals shows that no explanation worth the name has been tendered for the delay caused in filing the appeals against the order dated 24th April 2002. In the circumstances, insofar as the order dated 24th April 2002 is concerned, the appeals are required to be dismissed as barred by limitation.

13. Insofar as the order dated 17th June, 2009 is concerned, the Tribunal has recorded findings of fact to the effect that the only ground stated in relation to the delay of seven years caused in making the applications for restoration was that the sole owner of the unit was unwell and was unable to conduct the affairs of the manufacturing unit in the usual manner; that no supporting documentary evidence to indicate that the owner Shri Jivatram Laxmandas Dariyani was in fact unwell and was unable to conduct the affairs of the manufacturing unit has been produced. Nothing has been brought on record to dislodge the aforesaid findings of fact recorded by the Tribunal. Thus, in absence of any proper facts being brought on record, no sufficient cause had been made out by the appellants for condoning the delay caused in the filing of the restoration applications. In the circumstances, the impugned order dated 17th June 2009 made by the Tribunal rejecting the applications for restoration on the ground of laches on the part of the appellants, cannot be stated to suffer from any legal infirmity so as to warrant interference.

14. Insofar as reliance placed upon the decision of this Court in *Viral Laminates Pvt. Ltd. v. Union of India* (supra) is concerned, considering the view that the Court has taken in the matter, it is not found necessary to refer to or deal with the said decision. However, the Court feels that in an appropriate case, the said decision may require re-consideration by a Larger Bench.

15. In view of the above discussion, insofar as the challenge to the order dated 24th April 2002 made by CEGAT is concerned, the same is not entertained as being time barred as there is a considerable delay in preferring the appeals qua the said order and no application for condonation of delay has been moved.

16. Insofar as the challenge to the order dated 17th June, 2009 is concerned, for the reasons stated hereinabove, in absence of any legal infirmity in the impugned order of the Tribunal, no question of law, as proposed or otherwise, much less any substantial question of law can be stated to arise.

17. The appeals are, accordingly, dismissed with no order as to costs.

Appeal dismissed

