(2016) 02 BOM CK 0214

In the Bombay High Court

Case No : Notice of Motion No. 860 of 2014 in Central Excise Appeal (L) No. 19 of 2013

Assistant Commissioner of Central Excise	APPELLANT
Vs	
JSW Steel Ltd.	RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Citation : (2016) 334 ELT 592

Hon'ble Judges : S.C. Dharmadhikari and G.S. Patel, JJ.

Bench : Division Bench

Advocate : Kirankumar J. Phadake, Advocate, for the Appellant; Sachin Chitnis i/b. Ms. Padmavati Patil, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. The Revenue has filed this application seeking condonation of delay of 422 days which has occurred in applying for restoration of this appeal.

2. The Central Excise Appeal was filed in this Court on 8th January, 2013.

3. The Registry waited for the Revenue to remove the office objections. Each of these objections have been enumerated on the reverse of the file. In the presence of the then advocate appearing for the Revenue, time was granted as per rules to remove them. Some objections were indeed removed but from what we find is that despite the endorsement "All queries removed/complied with on 14th February, 2013", the Registry had informed the advocate that in second set of the appeal paper-book, the exhibits are not marked as true copies by advocate. This is obvious for this is an Appeal assigned to a Division Bench. If the complete sets are not furnished, the Appeal cannot be placed for admission before such Bench at all.

4. After sufficient time to comply, the Registry listed the matter before the Prothonotary & Senior Master and the Prothonotary & Senior Master passed an order dismissing this appeal for want of removal of office objection. That order

was passed on 30th June, 2013.

5. The Notice of Motion seeking to set aside that order has been filed on 3rd July, 2014. In the affidavit in support, the Assistant Commissioner states that there is delay because the Registry notified five objections. The objections were complied with on 14th February, 2013, is the statement in Paragraph 3 of the affidavit in support.

6. At the same time, Paragraph 4 opens with a statement that the objection at Serial Number 4 was not noticed by the appellant after 14th February, 2013 and could not be removed in time. It is apparent that Objection No. 4 was notified on 13th February, 2013.

7. In Paragraph 5 it is stated that the matter was listed before the Prothonotary & Senior Master on 28th February, 2013, and a conditional order was passed, a copy of which is at Annexure A to the affidavit in support.

8. That order grants four weeks? time to the appellant and their advocate. If the appellant was aware that it was listed before the Prothonotary & Senior Master on 28th February, 2013, then, it was its duty to have deputed somebody to appear or inform the advocate to appear before the Prothonotary & Senior Master.

9. We have been noticing that parties and advocates, including Revenue and their officials, take this entire exercise very lightly and casually. In terms of the Bombay High Court Original Side Rules, matters are taken up by high level Registry officials so that they are ready in all respects before they are listed before the Court for admission/hearing. This is to afford an opportunity to the parties and their advocates to comply with all procedural requirements set out in the Rules. There is a separate Board which is prepared and duly displayed. In the age of Information Technology, parties cannot now say that they are unaware of the matters being listed. The Prothonotary & Senior Master?s board and the Court?s board, for at least a week if not sooner, is available to the parties. Therefore, the routine explanation of the Revenue officials that it was the duty of their advocate and they were not required to follow up the matter/case with the advocate or with the Registry would mean sheer negligence and inaction. The Hon?ble Supreme Court has clarified in several judgments that the Revenue or Government is not a special litigant and deserves no such treatment. It is as much bound by the law and rules of limitation as every other litigant. The Governmental inefficiencies, deliberate inaction, negligence and bureaucratic ignorance which could be deliberate as well are not reasons which can be said to be sufficient cause for condoning delay and for all times and in all matters to come. If the Revenue officials feel that it is the duty of the advocate alone and they must not follow up the cases filed in the High Court, then, they ought to be realising that the assistance and sympathy uptill now shown by this Court is grossly abused. Now it is seen as a right to ignore matters which are filed and to not attend the Court or not to depute anybody to attend the Court offices so as to render the Court Registry the requisite assistance. The Revenue and the

Government is the biggest litigant in Courts. It ill comes from the Government that this Court does not dispose of matters in a timely manner and delay defeats justice. First of all why there is a delay and which could be the result of its complete negligence or deliberate inaction is something which the Government must ponder and correct for itself. This Court is not going to accept the routine explanation and which in this case hardly inspires confidence.

10. The advocate who filed the matter is no more and, therefore, a sympathetic view may be taken is the submission made out of sheer desperation. We do not know how before the date on which this application was listed before us and a good 15 or 20 days earlier, the Registry makes available the file to an advocate of the Revenue and allows him to endorse on the original set that all objections are removed. The objections are removed on 3rd February, 2016, allegedly. The matter stood dismissed already on 30th March, 2013. In a dismissed matter, we do not think any such indulgence can be shown to the Revenue and its advocate. All the more since, realising that the appeal is already dismissed, the present application/Notice of Motion to restore it was filed in this Court on 3rd July, 2014. The Registry notified the non-compliance with the procedural Rules insofar as the Restoration Application is concerned. The Appeal, as above, already stood dismissed and was not on file any longer. In the garb of removing the objections notified qua the Restoration Application, an attempt is made to demonstrate that the procedural non-compliance as regards the Appeal now stands rectified and removed. The record speaks otherwise. The deficiencies and defects in the Restoration Application were removed. That is how, though numbered in 2014, it is ready for listing in 2016. Hence, this is a conduct which we strongly disapprove and deprecate, for the Registry also has no business to entertain any request from advocates or allow them to tamper or touch the files in cases of this nature. The submission, intended to impress the Court, is that a lenient view be taken since the office objections are now removed and the stakes being high and therefore public interest is adversely affected. We are unimpressed by this.

11. The public at large is fully aware of all this and if crores of rupees are at stake, the Registry of this Court is not expected to entertain the Revenue and Government officials in a distinct manner. Equally, the Revenue officials and their advocate should be vigilant and not allow matters to go in default like in the present case.

12. They are themselves to be blamed for this mess and they cannot request the Court to accept any cause as sufficient and reasonable when that is bereft of accurate particulars, and details. The statements in the affidavit-in-support are not correct. Therefore, the reasons set out in Paragraphs 6 and 7 cannot be said to be sufficient cause within the meaning of the said expression.

13. As a result of the above discussion, we find no merit in the Notice of Motion and it is dismissed.