(2016) 01 GUJ CK 0030

In the Gujarat High Court

Case No : Special Civil Application No. 13531 of 2015

Hastimal Jeeraj Jain APPELLANT

Vs

Commissioner of Central and Others RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Citation : (2016) 01 GUJ CK 0030

Hon'ble Judges : Akil Abdul Hamid Kureshi and Mohinder Pal, JJ.

Bench : Division Bench

Advocate : P.A. Mehd, Advocate, for the Appellant; R.J. Oza, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Akil Abdul Hamid Kureshi, J.—1. Petitioner has challenged an order dated 21.08.2014 passed by the CESTAT in which, on account of long delay, application for restoration of the appeal of the petitioner came to be dismissed. The petitioner had appealed to the Tribunal against the judgment of the Excise authorities imposing duty and penalty liabilities. The Tribunal insisted that the petitioner deposits 10% by way of pre-deposit. Since it was not done, the appeal was dismissed without hearing on merits.

2. Learned counsel for the petitioner submitted that several appeals arising out of the same group were pursued before the Tribunal and, in fact, allowed by the Tribunal, against which the Department has filed appeals before the High Court which are pending. In the present case and in one another case of the same petitioner, restoration application could not be filed for several reasons. Counsel pointed out that Advocate of the petitioner has remained absent and the petitioner was not aware about dismissal of the appeal. In any case, the appeal was dismissed for not being able to fulfill the pre-deposit requirement, which the petitioner is prepared to do now.

3. Learned counsel Mr. R.J. Oza for the Department highlighted the long delay in

filing the restoration application.

4. When the question is only of pre-deposit not having been made and the appeal having been dismissed without consideration on merits, Courts have taken somewhat liberal stand in allowing the party to pursue the appeal by fulfilling such requirement even after substantial time-gap. Orders of this Court and the Supreme Court are not necessary to be cited.

5. In view of the facts on record, the Tax Appeal of the petitioner would be restored before the CESTAT on the condition that the petitioner fulfills the pre-deposit requirement latest by 25.01.2016. Petition is disposed of accordingly.

