(2011) 06 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 1937 of 2011

Kirtikumar Jawaharlal Shah APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 21-06-2011

Acts Referred:

Citation : (2012) 282 ELT 217

Hon'ble Judges : Vasanti A. Naik, J;P.B. Varale, J

Bench : Division Bench

Advocate : A. Dixit, for the Appellant; K.C. Deogade h/f S.K. Mishra, ASG, for the Respondent

Final Decision : Dismissed

Judgement

1. By this petition, the petitioner impugns the order passed by the Customs, Excise and Service Tax Appellate Tribunal on 7-5-2009 [2009 (242) E.L.T. 222 (Tribunal)] dismissing an application filed by the petitioner for restoration of the appeal by setting aside the order dated 5-11-2007 dismissing the same in default. It appears that an appeal was filed before the Customs, Excise and Service Tax Appellate Tribunal by the petitioner in the year 2004 and it was dismissed on 10-1-2005. The order of dismissal was recalled and the appeal was restored pursuant to an application moved by the petitioner, by an order dated 11-8-2005. Thereafter, by an order dated 15-9-2005 the petitioner was directed to deposit the entire amount of Rs. 18,62,219/- by 30-10-2005. The order dated 15-9-2005 came to be modified by an order dated 18-5-2007 and the petitioner was directed to deposit only a sum of Rs. 9,00,000/-, instead of depositing the entire amount. The petitioner, however, deposited the sum of Rs. 6,00,000/- by August, 2007 and since the time to deposit the balance sum of Rs. 3,00,000/- was extended by four weeks, the order needed to be complied on or before 5-10-2007. When the matter came up for hearing before the Tribunal on 5-11-2007, none appeared on behalf of the petitioner and as there was no compliance of the order dated 18-5-2007 and 20-8-2007, the appeal was

dismissed for non-compliance. The petitioner filed an application for restoration of the appeal, but the same was dismissed by an order dated 25-6-2008. After the dismissal of the previous application, the present application was filed on 29-8-2008.

2. Though, by the order dated 5-11-2007, the appeal filed by the petitioner was dismissed and the subsequent application was also dismissed by an order dated 25-6-2008, there was nothing on record to show why the petitioner did not file the application till 29-8-2008. Though, the petitioner had merely stated in the application that the petitioner could not deposit the amount in time due to financial difficulty, there was nothing on record to show as to what attempts were made by the petitioner to raise the necessary amount of Rs. 3,00,000/- and to deposit the same. The Tribunal, therefore, on a consideration of the facts of the case, as also the fact that the appeal was filed in the year 2004 and the same was not prosecuted diligently by the petitioner, dismissed the application filed by the petitioner as there was absence of sufficient cause in not depositing the amount of Rs. 9,00,000/- before the Tribunal in terms of the orders dated 18-5-2007 and 20-8-2007. Though, the appeal was dismissed by an order dated 5-11-2007, the present application was filed on 29-8-2008 without disclosing the cause for the delay in filing the application for setting aside the order dated 5-11-2007. The Tribunal rightly observed that in the absence of the reasons for belatedly filing the application, the application was liable to be dismissed. The Tribunal observed that the period for filing the appeal is three months and by considering the said fact, the application for restoration also ought to have been filed within the maximum period of three months from the dismissal of the appeal, though there is no period of limitation prescribed for filing an application for setting aside the order of dismissal. The Tribunal was justified in holding that in any case, since the application was filed beyond the period of three months from the date of dismissal of the appeal, the petitioner ought to have disclosed the cause for belatedly filing the same. The order of the Customs, Excise and Service Tax Appellate Tribunal is just and proper and cannot be interfered with in exercise of the writ jurisdiction. In the result, the writ petition fails and is dismissed with no order as to costs.

