
(1994) 04 DEL CK 0017
In the Delhi High Court
Case No : Writ Petition No. 5152/93

Wazir Chand and Sons

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 26-04-1994

Acts Referred:

Citation : (1994) 72 ELT 523

Hon'ble Judges : M. Jagannadha Rao, J;K. Shivshankar Bhat, J

Bench : Division Bench

Advocate : Shri J.S. Sinha, for the Appellant; Ms. Barkha Babbar, for the Respondent

Judgement

1. By this writ petition the order dated 23-7-1993 passed by the CEGAT is challenged. The order was communicated to the petitioner by the Registrar, CEGAT on 3-8-1993. By the said order the CEGAT dismissed the application for condensation of delay u/s 5 of the Limitation Act for filing the appeal.

2. Learned counsel for the petitioner pointed out that the advocate, who appeared in this case, Shri Manoj Arora had filed an affidavit on 24-12-1992 indicating that he drafted the appeal in November, 1991 and had also obtained a bank draft of Rs. 200/- as fee bearing No. 428575 dated 2-11-1991 from the Canara Bank, Hauz Khas Market, New Delhi and that thereafter he had handed over appeal memorandum to the peon for filing the same but the said peon did not file the same. Subsequently, the advocate went to verify the same as notice was not received and then found that the appeal papers were not available in the Registry of the Tribunal. He came to know about these facts and then filed the appeal on 29-12-1992. There was a delay in filing the appeal.

3. The CEGAT refused to condone the delay in filing the appeal and rejected the application for condensation as well as the appeal. The facts mentioned in the affidavit of Shri Manoj Arora, Advocate, have been set out. We also find that after the advocate came to know about the fact that the peon had not filed the appeal

of memorandum in the CEGAT, he immediately took action and got the appeal filed on 29-12- 1992. The grounds set out in the affidavit of Shri Manoj Arora have been set out in para-4 of the order of the CEGAT, which reads as under :-

"(2) That I had drafted the appeal in November, 1991 and had also obtained a bank draft for Rs. 200/- as fees bearing No. 428575 dated 2-11-1991 from the Canara Bank, Hauz Khas Market, New Delhi.

(3) That after preparing the same, the appeal was handed over to the peon for filing and the peon came back and assured the deponent that the same had been filed. That, however, subsequently, the deponent went to verify the same as notice was not received by it and transpired that the same was not available in the registry of the Tribunal.

(4) That thereafter the deponent advised the appellant for condensation of delay."

4. On perusal of the said grounds mentioned in the application for condensation of delay, we are of the view that the CEGAT ought to have condoned the delay when the delay was occasioned by some communication gap in the office of the advocate concerned and the party was not to be blamed. Even so far as the advocate is concerned, there is ample evidence to show that he purchased the bank draft for Rs. 200/- on 2- 11-1991 from the Canara Bank and this shows that the advocate took sufficient steps to have the appeal filed in time. The only mistake was that he did not check up whether his peon had filed the appeal papers in the CEGAT. In our opinion, the CEGAT ought to have accepted the above-said Explanation of the advocate. So far as the alleged negligence and laches of the advocate are concerned, we are of the view that there is again sufficient Explanation for condoning the delay. In fact in hardly a month, the party was contacted, the record was rebuilt and then the appeal was filed. We are, Therefore, of the view that the CEGAT erred in condoning the delay. The writ petition is allowed and the order of CEGAT is quashed and the delay in filing is condoned. The CEGAT is directed to register the appeal, provided the petitioner satisfies the other conditions required under the law.