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IN THE HIGH COURT OF DELHI AT NEW DELHI

CM Nos. 2338, 2339 and 2340 of 2010

in

CUS.A.C.No.18 OF 2007

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Date of Decision: 15th July, 2010.

YASHPAL GUPTA

. . . Appellant/Applicant

through :

Mr. Gaurav Kumar Singh with
Mr. Manoj Tiwari, Advocates

VERSUS

UOI AND ORS.

. . . Respondents

through:

Mr. Mukesh Anand, Advocate

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE REVA KHETRAPAL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)

1. CM Nos.2338/2010, 2339/2010 & 2340/2010

The first application, i.e. CM No.2338 of 2010 moved by the appellant is for restoration of the appeal, which was dismissed in default on 28.10.2009. Second and third CM, i.e. 2339, 2340/2010 are for condonation of delay in filing/refiling the first application. It is stated that there is delay of 5 days in filing and 11 days in refiling the appeal.

2. There is history of frivolous proceedings initiated by the appellant before he filed the present appeal. In this appeal though the order of the Customs Excise and Service Tax Appellant Tribunal (hereinafter referred to as 'the Tribunal'), which was passed on

21.11.2005. However, no appeal was preferred immediately thereafter. One writ petition challenging that order was filed much belatedly in February, 2007. This writ petition was returned under objection on 09.02.2007. The appellant took substantial time in removing those objections, as the writ petition was returned under objections four times. When ultimately, the writ petition came up for hearing on 16.03.2007, the Division Bench dismissed the said writ petition. It is alleged in this appeal that this writ petition was dismissed as not maintainable and liberty was granted to the petitioner to take appropriate proceedings in accordance with the law. However, the said order has not been placed on record. Thereafter, the present Appeal was filed on 03.03.2007. Again there were so many objections raised by the Registry. The appellant kept on receiving this appeal back from removing the objections, but would not remove all the objections. This process went on for almost nine months. After removing the objections finally, this appeal came up for the first time for hearing on 07.12.2007. By that time, more than two and half years had passed from the date of passing of the order by the Tribunal. Along with this appeal, applications for the condonation of delay in filing the appeal as well as refiling the appeal were filed. There was delay of 162 days in filing the appeal. Notice in these applications was issued when the reply to these applications were filed by the respondent. When the matter came up for hearing on 02.07.2009, request for short adjournment was made by the appellant, which was adjourned to 31.07.2009. On 31.07.2009 again request was made by the counsel for the appellant for adjournment. Matter was once again adjourned to 22.09.2009.

On this day, yet another request for adjournment was made on the plea that counsel has recently been engaged. At his request, matter was adjourned to 28.10.2009. However, this time the Court categorically observed while adjourning the case that no further adjournment shall be granted. Notwithstanding specific orders on the last date, the appellant did not even chose to appear on 28.10.2009.

3. In these circumstances, the following order was passed:

“Learned counsel for the Appellant has not appeared even on the second call.

Order sheet shows that the Appellant has been taking repeated adjournments and on the last date while giving last opportunity to the Appellant it was made clear that no further adjournment shall be granted.

In these circumstances, we have left with no alternative but to dismiss this appeal for non-prosecution and non-appearance.”

4. In the application for restoration moved by the appellant does not deny that the appellant knew about the date of hearing, i.e., 28.10.2009. No valid reason at all is given for non-appearance. Strange reason which is given is that due to some personal difficulty of the appellant, necessary documents in the file could not be organized and coordinated with counsel and hence files could not be organized as per Court record viz-a-viz lack of instructions to the Advocate concerned. Even if that is presumed correct, there was no reason not to appear in the Court on that date and pleaded the aforesaid ground for taking an adjournment. The manner in which the matter has proceeded, it gives clear impression to us that the aforesaid reason given is also totally frivolous and false.

5. Be as it may, in any case it is not a valid reason for non

appearance.

6. It may further be observed that when the appellant came to know that the appeal is dismissed for non-appearance on 28.10.2009, no immediate steps were taken by filing the application for restoration. Instead, the appellant waited till December, 2009 to file the application which was also got listed only in February 2010. This also gives an impression that the appellant was waiting for change of Roster/Bench and got the application listed only in February 2010 because of this reason.
7. We may also point out at this stage that the appellant is a Chartered Accountant and the allegation against him is that he had held that M/s Himgiri Overseas and M/s Deepshikha Overseas in making a false claim for duty drawback. Such duty drawback was obtained by the aforesaid firms from the Government against some readymade garments exports, but it was ultimately found that the consignment contained only rags and not the readymade garments, which was supposed to be exported. When the proceedings were initiated against the aforesaid company and the appellant was implicated and arrayed in those proceedings keeping in view his role, he made a statement before the concerned Officer that it is he who had created the aforesaid false firms to withdraw the drawback claim and this fact was categorically admitted by him. He also in his statement submitted that he was doing so on commission basis. He went to the extent of conceding that all the bank accounts of the firms were opened at his instructions. On this basis, penalty of Rs.2 lakhs was imposed against him, which has been sustained by the Tribunal as well. Present appeal is confined to the said penalty. The entire

case based on the facts that no substantial question of law arises.

8. In view of the above, we, thus, find that no substantial question of law arises. The proceedings are nothing but misuse of process of law. We, therefore, dismiss all these applications with cost of Rs.10,000/-. The cost shall be paid to Delhi High Court Mediation and Conciliation Centre.

(A.K. SIKRI)
JUDGE

(REVA KHETRAPAL)
JUDGE

JULY 15, 2010.
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