

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

CENTRAL EXCISE APPEAL NO. 08 OF 2023

12TH JULY, 2023

BETWEEN:

Tasleem Ahmad Appellant.

And

Commissioner of Customs Respondent.

Counsel for the Appellant : Mr. Navneet Kaushik, learned counsel.

Counsel for the Respondent : Mr. Shobhit Saharia, learned counsel.

The Court made the following:

JUDGMENT: (per Hon'ble The Chief Justice Sri Vipin Sanghi)

The present appeal is directed against the order dated 11.04.2022, passed by the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, R.K. Puram, New Delhi in Final Order No.A/50370/2022-EX(DB) in Excise Appeal No.50808 of 2019.

2. By the impugned order, the Tribunal rejected the appellant's application seeking condonation of delay in preferring the appeal before the Tribunal, and also imposed costs of Rs.10.00 Lakhs on the appellant. The appellant had preferred the said statutory appeal before the Tribunal to assail the order dated 30.06.2017, passed by the Commissioner, CGST, Dehradun. The appeal was accompanied by an application seeking condonation of delay in filing the appeal. Condonation of delay was sought on the

premises that the appellant- Tasleem Ahmed was not aware of the passing of the order dated 30.06.2017, since he had resigned from the Directorship of the Company in July, 2014. He claimed that he became aware of the impugned order dated 30.06.2017 when recovery proceedings were started in pursuance of the said order, only on 21.02.2019. Consequently, he claimed that he had preferred the appeal in time from the date of the knowledge of the said order. He also made a statement on oath that the averments made in the delay condonation application are true and correct to the best of his knowledge and belief, and that nothing has been concealed therefrom. He also gave an undertaking before the Tribunal that in respect of the subject matter of the appeal, he had not filed any earlier proceedings, and nothing was pending before any other legal forum, including the High Court and the Supreme Court.

3. Before the Tribunal, the respondent disclosed that the appellant had, in fact, earlier preferred Central Excise Appeal No.50087 of 2018, which appeal was dismissed by the Tribunal on 11.01.2018., because the appellant did not deposit the statutory amount for filing the appeal.

4. Pertinently, the said appeal had also been preferred by the same counsel, who represented the appellant while filing and pursuing the appeal, in question. The appellant was required to meet the said allegations of the respondent-

department and granted time for the same. The impugned order shows that the appellant not only failed to appear before the Tribunal, but he also failed to file a proper affidavit to explain as to why a fresh appeal was filed against the same impugned order, when the earlier appeal had been preferred and dismissed by the Tribunal, as aforesaid.

5. Consequently, the Tribunal found that the appellant had abused its process, and dismissed the application seeking condonation of delay as well as the appeal with costs of Rs.10.00 Lakhs. The application preferred by the appellant for restoration of the appeal was dismissed by the Tribunal on 29.08.2022, and thereafter, yet another application was preferred, which too was dismissed on 04.11.2022.

6. Learned counsel for the appellant submits that he had not preferred the earlier appeal, since he had not signed either the memo of the appeal, or the *Vakalatnama*.

7. We do not find any merit in this submission, for the reason, that when the appellant was granted the opportunity to file an affidavit to explain the position as to how the earlier appeal had been preferred, he failed to do so. It is obvious that the counsel had preferred the earlier appeal upon instructions of the appellant, as no counsel would, on his own file an appeal or other proceedings before any Court or

Tribunal, without receiving instructions, including the fees therefor.

8. In our view, the appellant has got away very lightly with the imposition of costs of Rs.10.00 Lakhs. In fact, it was a fit case for initiation of proceedings for perjury against the appellant. However, since the Tribunal has chosen not to take steps, we say no further in that regard.

9. The appeal is dismissed with costs of Rs.50,000/- to be deposited with the Uttarakhand Legal Services Authority within two weeks.

10. Since we have examined the present appeal on merits, we are not going into the aspect of delay.

11. The appeal is dismissed with the aforesaid observations.

12. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 12th July, 2023

NISHANT