

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

STA No. 7 of 2015 (O & M)
Date of Decision:- 26.05.2015

M/s. Tops Security Ltd. and others

.....Appellant(s)

VS.

Commissioner, Central Excise and Service Tax Commissionerate, Ludhiana
and another

.....Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE S.J. VAZIFDAR,
ACTING CHIEF JUSTICE**

HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present:- Mr. Sandeep Goyal, Advocate,
for the appellants.

Mr. Kamal Sehgal, Advocate,
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be report in the Digest?

S.J. VAZIFDAR, A.C.J. (Oral)

C.M. No. 10874-CII of 2015

Application for placing on record Annexure A-13 is allowed,
subject to all just exceptions.

Annexure A-13 is taken on record.

STA No. 7 of 2015 (O & M)

This is an appeal against the order of the CESTAT dismissing
the appellants' application for restoration of their appeals and dismissing the
applications of the appellants for extension of time to deposit the amounts
as a condition precedent to the maintainability of the appeal.

The appeal is admitted on the following substantial questions of

law:-

“i) Whether in the facts and circumstances of the case, rejection of the application for restoration of the appeal by the Learned Tribunal was justified in law?

ii) Whether in the facts and circumstances of the case, the delay of 4 days to deposit the amount of pre-deposit owing the financial hardship faced by Appellant was justified in law and condonable?”

The appellants had filed an appeal before the CESTAT against an order of the Commissioner raising a demand of about ₹58 lacs. The merits of the demand are not relevant for the purpose of this judgment. By an order dated 25.09.2012, the appellant no. 1 was directed to deposit the balance of the service tax within 8 weeks. Appellants no. 2 and 3 are the Directors of the company. They were directed to deposit an amount of ₹5,00,000/- each within 8 weeks. The deposit of the aforesaid amounts was a condition precedent to the maintainability of the appeals.

By an order dated 29.01.2013, the time to deposit the amount was extended by a period of 8 weeks. By yet another order dated 15.04.2013, the time to deposit the amounts was extended upto 20.04.2013. On 22.04.2013, the appellant filed an application for a further extension. The appellants had failed to deposit the aforesaid amounts.

On 22.04.2013, the appeal itself was dismissed for non-compliance of the aforesaid orders requiring the appellants to deposit the said amounts. At that stage, the last application for extension filed on 22.04.2013 had not been decided. As we mentioned earlier, the last date for depositing the amounts was 20.04.2013.

On 27.04.2013, the appellants deposited the entire amounts.

Accordingly, they made an application for restoration of the appeal which had been dismissed in default on 20.04.2013.

There was, therefore, a delay of only 7 days in complying with the orders requiring the appellants to deposit the amounts. The application for extension of time filed on 22.04.2013 and the application for restoration were, however, dismissed by the order of the Tribunal dated 26.09.2013 impugned in this appeal.

We do not see any reason to deny the appellants an extension of a mere 7 days. It would be grossly inequitable and unfair to deny the appellants an opportunity of having their case heard on merits on account of their having delayed in complying with the order by just 7 days. The application for extension dated 22.04.2013 was pending when the appeal was dismissed on 23.04.2013 for non-compliance with the said orders. They could not have deposited the amounts on that date without a formal order. Had the order been passed on the date of the application itself, there would be a delay of only 2 days.

The contention that the CESTAT does not have power or jurisdiction to grant an extension of time or to restore the appeal is not well founded. Section 86(6A) of The Finance Act, 1994 reads thus:-

“86. Appeals to Appellate Tribunal

xxx

xxx

xxx

[(6A) Every application made before the Appellate Tribunal,-

(a) in an appeal for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application;

shall be accompanied by a fee of five hundred rupees:”

Sub section (6A) of Section 86 of the Finance Act presupposes the maintainability of an application for restoration of an appeal or an application. Thus, even assuming that there is no separate provision relating to or permitting applications for restoration, it would make no difference. The CESTAT would always have the power to restore an appeal which has been dismissed for any reason including for non-compliance of a deposit order.

Rule 41 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 which makes this clearer, reads as under:-

“41. Orders and directions in certain cases.

The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or to secure the ends of justice.” (emphasis applied.)

The concluding words “to secure the ends of justice” are wide enough to cover cases such as these viz. to grant an extension of time to deposit an amount or to restore appeals dismissed on account of the failure to comply with the orders of pre-deposit.

The appeal is, therefore, allowed. The questions of law are answered in favour of the appellants and against the respondents. The appeal shall stand restored to the file of the CESTAT and shall be heard on merits.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

26.05.2015

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(G.S. SANDHAWALIA)
JUDGE