

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO. 296 OF 2016

M/s. Ravi Raj Processors Pvt. Ltd.
versus
Union of India & Ors.

..Appellant
..Respondents

Mr. P. V. Dhopatkar with Mr. S. S. Vhatkar i/b. Santosh Vhatkar and Associates for Appellant.

Mr. Swapnil Bangur with Ms Ruju R. Thakker for Respondents.

**CORAM: S. C. DHARMADHIKARI &
SMT. BHARATI HARISH DANGRE, JJ.**

DATE : 23RD JANUARY, 2018

P. C. :

1] We have heard both sides. The only question of law that is projected is that the Tribunal when it passed the impugned order had lost sight of the rules and particularly the procedural rule which does not empower the Tribunal to dismiss the appeal for default or for want of prosecution. The substantive provisions as also the rules do not authorize the Tribunal to dismiss a appeal for want of prosecution or in default on the absence of the appellant or the Advocate / legal representative. Mr. Dhopatkar would submit that precisely that has happened in the present matter and we must proceed to quash the order of the Tribunal.

2] The Tribunal has noted that it is the appellant who instituted an appeal and sought a date of hearing of the stay application / appeal. That date was known to the appellant well in advance. The appellant himself lodged his appeal and in his presence he was told that it would be taken

up on the given date and time when he was absent nor did he authorize anybody to remain present to argue the appeal on his behalf, the Tribunal dismissed the appeal for want of prosecution,

3] Then fearing that the recovery may be made by resort to coercive means this appeal has been filed.

4] After hearing Mr. Dhopatkar at some length as also Mr. Bangur, we do not think any larger question should be decided or determined in this appeal. Eventually the appellant seeks an opportunity from the Court / Tribunal of a hearing of his appeal on merits. That we are willing to extend to him by exercising our inherent jurisdiction and to render complete justice. However, we have to balance the rights and equities. We think that the following order will serve the ends of justice:

ORDER

(A) If the appellant deposits with the Revenue a sum of Rs.25,000/-(Rupees Twenty Five Thousand) as costs within four weeks from today and reports compliance, the appeal as also stay application filed in the Tribunal shall be restored for hearing on merits;

(B) In the event of default the impugned order stands and then the appellant will have no opportunity to revive his appeal or application for stay;

(C) This appeal is disposed of accordingly.

(SMT. BHARATI H. DANGRE, J.)

(S. C. DHARMADHIKARI, J.)