

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
WEST ZONAL BENCH, MUMBAI

Application No.C/ROA/85003,85002/2019  
Appeal No. C/251, 252/2008

Date of Decision: 11.2.2019

**LALIT MANGE**  
**AMI CLEARING AND FORWARDING PVT LTD**

**Vs**

**COMMISSIONER OF CUSTOMS (EXPORT) NHAVA SHEVA**

Appellant Rep by: Shri Mihir Mehta, Adv.

Respondent Rep by: P Vinita Sekhar, Additional Commissioner, AR

CORAM: C J Mathew, Member (T)

Ajay Sharma, Member (J)

Cus - Applications made for restoration of appeal - Matter was indeed disposed of ex parte by Tribunal albeit with elaborate findings - there is also no doubt that notice had been issued but the applicant had changed their address and failed to inform the Registry and also had opted to be without legal representation for quite a while - It is the applicant who has failed to protect its interest by neither intimating the change of address to the Registry nor informing the postal authorities of the forwarding address - the same lack of diligence is amply displayed in the failure to avail of legal representation for which no justifiable reasons are offered - Effectively, what is pleaded for by the applicant is not the right to be heard but the right to be represented by proper counsel - principles of natural justice cannot be stretched that far - no reason to entertain these applications, hence rejected: CESTAT [para 6, 7]

Applications rejected

Case laws cited:

*Intron Ltd v Commissioner of Central Excise, New Delhi [2001 (127) ELT 290 (Tri-Del)] ...Para 3*

*Swadeshi Koreatex v Commissioner of Central Excise, Jalandhar [2009 (15) STR 632 (Tri-Dei)] ...Para 3*

*May & Win Enterprises Pvt Ltd v Commissioner of Central Excise, Belapur - 2008-TIOL-1014-CESTAT-MUM...Para 3*

*Shri Maheshwari Mills v Commissioner of Central Excise & Customs [2016(41) STR 600 (MP)]...Para 3*

*JK Synthetics Ltd v Collector of Central Excise - 2002-TIOL-261-SC-CX...Para 3*

**ORDER NO. M/85152-85153/2019**

This application seeks restoration of appeal no. C/252/2008 & C/251/2008 filed by Shri Lalit Mange and Ami Clearing & Forwarding Pvt Ltd against order-in-original no. S/10-05/07 CC Adj. M-II/ SG/Misc-121/2004 CIU JNCH dated 14th December 2007 of Commissioner of Central Excise Customs (Adjudication), Mumbai II which had been disposed off along with that of seven others, vide order no. A/90025-90023/17/CB dated 28th September 2017.

2. Though the application, as well as the oral submissions of the Learned Counsel for applicant, have delved at length on various grounds that, in their view, evinces miscarriage of justice, the primary contention, in our view, is that the appeal had been disposed off without, what is considered by him, insufficiency of notice.

3. To bolster the submission that the matter needs to be re-heard, Learned Counsel relies upon the decisions of the Tribunal in *Intron Ltd v Commissioner of Central Excise, New Delhi* [2001 (127) ELT 290 (Tri-Del)] in *Swadeshi Koreatex v Commissioner of Central Excise, Jalandhar* [2009 (15) STR 632 (Tri-Dei)] and in *May & Win Enterprises Pvt Ltd v Commissioner of Central Excise, Belapur* [2009 (236) ELT 352 (Tri-Mum)] = **2008-TIOL-1014-CESTAT-MUM** and of the Hon'ble High Court of Madhya Pradesh in *Shri Maheshwari Mills v Commissioner of Central Excise & Customs* [2016(41) STR 600 (MP)]. The other decisions, concerned as they are with adequacy of coverage of the order and the logic of the findings, cited by Learned Counsel, are not germane to an application for restoration of appeal as those foray into merits and correctness of the order which are rectifiable by other remedial instruments. Further reliance is placed on the decision of the Hon'ble Supreme Court in *JK Synthetics Ltd v Collector of Central Excise* [1996(86) ELT 472(SC)] = **2002-TIOL-261-SC-CX**.

4. We have heard Learned Authorised Representative.

5. From an examination of the records, we find that the matter was, indeed, disposed of ex parte by the Tribunal albeit with elaborate findings. There is also no doubt that notice had been issued. Learned Counsel, while submitting that the applicant had changed their address, does not contest that they had failed to inform so to the Registry and that the appellant had opted to be without legal representation for a quite a while. In the various decisions cited, the substantive issue, as pointed out by Learned Authorised Representative, was the dismissal of appeals without going into the merit of the grounds. That is not so here and such is not the plea of the Learned Counsel.

6. The decision of the Hon'ble Supreme Court in re *JK Synthetics Ltd*, though conceding substantial latitude to the Tribunal in restoration of appeals to further the rendering of justice, has, nevertheless, made it obligatory for the Tribunal to consider the facts and circumstances before

**doing so. We find here that it is the applicant who has failed to protect its interests by neither intimating change of address to the Registry nor informing the postal authorities of the forwarding address. The same lack of diligence is amply displayed in the failure to avail of legal representation for which no justifiable reasons are offered. Effectively, what is pleaded for by Learned Counsel now is not the right to be heard but the right to be represented by proper counsel. Principles of natural justice cannot be stretched that far.**

**7. We, therefore, find no reason to entertain these applications which are rejected.**

**(Dictated in Court)**