

## Central Mine Planning and Design Institute Limited Vs The Commissioner, Central Excise and Others

**Court:** Jharkhand High Court

**Date of Decision:** Jan. 23, 2013

**Hon'ble Judges:** Prakash Chandra Tatiya, C.J; Jaya Roy, J

**Bench:** Division Bench

### Judgement

1. Heard learned counsel for the parties. The petitioner preferred an appeal being Service Tax Appeal No. 134 of 2008 before the Customs,

Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata. The said appeal was dismissed vide order dated 19.12.2008 on the

ground that the appellant being a public sector unit was required to obtain a COD clearance to pursue the appeal which has not been obtained. A

liberty was given to the appellant-petitioner to obtain the clearance from COD for preferring the appeal and then move application for restoration.

The petitioner applied before COD for grant of permission to prefer the appeal but that was declined by the COD vide order dated 30.06.2009.

The petitioner also filed one application No. MA(ROA) 307/09 for restoration of its appeal S.T. Appeal No. 134 of 2008 which application was

dismissed vide order dated 30.5.2010. Then, petitioner submitted a review petition before the COD. Admittedly, no order has been passed by the

COD on the review petition filed by the petitioner for granting permission to the petitioner to prefer the appeal. However, again one miscellaneous

application No. MA(ROA) 444 of 2011 has been filed for restoration of the appeal being S.T. Appeal No. 134 of 2008 before the Tribunal

which was dismissed vide order dated 02.07.2012 in absence of the petitioner and after observing that ""the applicant filed the restoration

application and that application was earlier dismissed. Today the applicant is not present nor any time was sought."" In view of the above, the

Tribunal observed that the applicant is not serious to pursue their application. Again one more application has been filed for restoration of appeal

being S.T. Appeal No. 134 of 2008 and that application is pending before the Tribunal.

2. Now, the petitioner has filed this writ petition challenging the order dated 02.7.2012 passed by the Tribunal dismissing the petitioner's appeal

being S.T. No. 134 of 2008 on the ground that subsequently, the Hon"ble Supreme Court in the case of Electronics Corporation of India Ltd. Vs.

Union of India (UOI) and Others, observed that clearance of COD cannot be a just reason for preferring appeal by public sector units. Therefore,

according to learned counsel for the petitioner, the appellant's appeal was maintainable and COD, if would have been functional, would have

granted the clearance for preferring appeal. Since, in view of the judgment of Hon"ble Supreme Court, the COD is now non-functional, the appeal

of the petitioner deserves to be restored.

3. We considered the submission of learned senior counsel Shri Binod Poddar. The application for restoration of S.T. Appeal No. 134 of 2008 is

pending before the Tribunal and we do not find any reason for the petitioner to approach this Court for seeking any relief. If the law is well settled

by the Hon"ble Supreme Court, then it was for the applicant to pursue for restoration of its appeal before the Tribunal and the Tribunal has yet not

passed the order for dismissal of the restoration application and, therefore, this writ petition is absolutely pre-mature and liable to be rejected only

on the ground of pre-maturity.

4. Learned counsel for the petitioner submitted that learned Tribunal may be directed to consider and decide the restoration petition expeditiously.

5. The CESTAT may decide the application for restoration of appeal in accordance with law according to its workload in view of the fact that

since long, the matter is pending before the Tribunal and twice the petitioner's applications have been dismissed and thus, the Tribunal may do the

needful expeditiously.

6. Learned counsel for the petitioner sought interim relief on the ground that the petitioner is a public sector unit and its appeal has been dismissed

for no fault of the petitioner and its restoration application is pending before the appellate authority.

7. We are of the considered opinion that the public sector undertakings are not above the law, nor above the citizen and in this matter, the order

was passed against the petitioner-assessee long back and its appeal was dismissed as back as on 19.12.2008. For the reasons best known to the

revenue, they did not choose to recover the amount which should have been recovered after the dismissal of the appeal and for want of any interim

order from any Court of law, it was the duty of the revenue to recover the amount. Revenue is due in the petitioner since the year 2008 and today,

even no appeal is pending questioning the liability and only application for restoration of appeal is pending and twice the restoration application has

been dismissed by the appellate authority. Therefore, in the facts of the case, we do not find any reason to stay the demand. Accordingly, the

prayer for interim order is rejected.