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CESTAT, Chennai joins FM in his revenue drive!

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The Chennai bench of the Hon'ble Tribunal has started doing its bit, to fulfill the dream of the Hon'ble Finance Minister, in achieving his revenue targets!

Ever since the retirement of Shri. Jeet Ram Kait, Member (T) of the Chennai bench of the Hon'ble Tribunal early this month, the Chennai bench is having its sitting, with Members from other benches, on deputation basis. Accordingly, Shri. C. Satapathy, Member (T) of Mumbai bench is sitting along with Shri. P.G.Chakko, Member (T), during this week. When some of the advocates have sought the leave of the Hon'ble Bench, during "mention" time, to seek adjournments of some of the cases listed before the bench for that day, there were in for a shock. Shri. C. Sathapathy, Hon'ble Member (T) has observed that the request for an adjournment is also an application before the bench and the same has to be accompanied by a fee of Rs.500. He also informed that the same practice is being followed in Mumbai benches. The above insistence on payment of a fee for the requests for adjournments, has made us to delve deep into the issue.

As per the amended provisions of Section 35 B of the Central Excise Act, 1944,

every application made before the Appellate Tribunal --

(a) in an appeal for grant of stay or 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.

The term "for any other purpose" was interpreted by the Bench that an application for an adjournment would also be covered in its ambit and a fee of Rs.500 shall be paid in this regard.

In this connection, it is relevant to observe that the term "for any other purpose" shall not be given an extended meaning and the same shall be interpreted only in accordance with the expressions preceding the same, which principle of interpretation is better known as *"ejusdem generis"*. If the matters enumerated in the above said statutory provisions are looked into, it may be observed that an application for grant of stay or an application for rectification of a mistake or an application for restoration of an appeal or application, are substantial in nature. It requires active consideration of the issue involved in the application / appeal, by the Hon'ble bench. But, an application for adjournment, does not require any active consideration of the issues involved. It is purely a procedural routine, during the administration of justice. Based on the grounds upon which the adjournment is prayed for, it is for the bench either to grant it or reject it. An application for adjournment cannot be compared with an application for stay. As such, we humbly feel that an application for adjournment cannot be read as being equivalent, to either an application for stay or for restoration, requiring payment of the required fee.

Often, adjournments are orally requested for, during the "mention" time. Often, the reasons for the adjournments are known in the last moment and only an oral request could be made either by the concerned advocates or their colleagues. It may also happen that during the course of hearing of an appeal, a need for seeking adjournment may arise, so as to clarify any particular issue, or to produce some more documents / case laws, etc. In such cases, how it would be possible for an advocate to

produce a demand draft for Rs.500, along with his "application" for adjournment? Or, shall they keep several DDs in their hand always? (The contingent employees of the Tribunal may engage in the trade of DDs and sell 500 Rupees DDs for a premium!). Or, will the Banks be made to open their extension counters inside the Court Hall?

The above insistence of payment of a fee of Rs.500 was also justified by the Hon'ble Chennai bench of the Hon'ble Tribunal, on the ground that the government is concerned about the delay in judicial process and that is why the number of adjournments have been restricted to three.

In this connection also, we wish to differ from the above view. The power to grant adjournments is an inherent power of any judicial forum, which has to be exercised cautiously by such forums. Curtailing such basic discretion of a judicial forum is not in the interest of proper administration of justice. A sensitized judiciary would never allow the litigation to procrastinate in the guise of adjournments, even in the absence of any statutory provision to do so.

It is also worthwhile to note any legislative attempt to interfere with the basic and fundamental discretionary powers of the judicial forums have always been negated by the Judiciary, in the recent past. When the Commissioner (Appeals)'s power to remand the cases for *de nova* consideration was taken away, the High Court of Gujarat has held otherwise, in the case of CCE Vs Medico Labs – 2004 – TIOL – 39 HC - GUJ. Similarly, when the life of the stay orders passed by the Tribunals was sought to be curtailed to 180 days, the Larger Bench of the Tribunal has observed that the stay can be extended, in the case of IPCL Vs CCE – 2004 –TIOL – 556 CESTAT-MUM-LB. May be, the restriction of adjournments to three, would also face a similar fate, in the near future.

In the meanwhile, will the CESTAT or the Government kindly clarify, whether the fee of Rs.500 is applicable, even for applications, rather requests, for adjournment?