IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No.41793 of 2014

(Arising out of Order in Appeal C. Cus. No. 646/2014 dated 9.4.2014 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Roots Multiclean Ltd. **Appellant**
RKG Industrial Estate
Ganapathy, Coimbatore – 641 035.

Vs.

Commissioner of Customs **Respondent**
Chennai Export Commissionerate
Custom House, 60, Rajaji Salai
Chennai – 600 001.

APPEARANCE:

None for the Appellant
Shri Anoop Singh, JC (AR) for the Respondent

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Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40427/2024

Date of Hearing : 05.04.2024
Date of Decision: 05.04.2024

Per M. Ajit Kumar

When the matter came up for hearing on 5.4.2024, it was observed that there was no one to represent the appellant. It is seen from case proceedings that this appeal pertains to the year 2014 and has come up for hearing on three earlier occasions. The noting in the order sheets of those hearings are as below:-

(i)	17.11.2023	Adjourned on the request of the learned counsel for the appellant to 10.01.2024
(ii)	10.01.2024	Adjourned on the written request of the learned counsel to 26.02.2024
(iii)	26.02.2024	Adjourned on the request of the learned counsel for the appellant to 5.4.2024

2. Shri Anoop Singh, learned Joint Commissioner (AR) appeared on behalf of the Revenue. He has stated that as per Section 35C of the Central Excise Act, 1944, no adjournment shall be granted for more than three times to a party during the hearing of the appeals. He further stated that as per Rule 20 of CESTAT (Procedure) Rules, 1982, if the appellant does not appear on the date fixed for hearing, the Tribunal may at its discretion either dismiss the appeal for default or hear and decide it on merits. Hence, he strongly prayed that the matter may be dismissed for default. He also drew attention to the decision of the Tribunal in the case of **Pankaj Vs. CCE, Kanpur** [2023 (12) TMI 910 – CESTAT Allahabad], a copy of which was also furnished by him.

3. We have gone through the appeal papers and find that the Appellant has sought adjournments when the cases were listed on 17.11.2023, 10.1.2024 and 26.2.2024 for one reason or the other. Having filed an appeal, the appellant or his authorized representative is duty bound to appear before the Tribunal when the appeal is fixed for hearing. The daily 'Cause List' showing the cases being listed for hearing is available in the public domain on the Tribunals website. After filing an appeal, due diligence mandates that the Appellant follow up on the matter and make himself available on the date of hearing either in person or by his Authorized representative. Persons with good causes of action should pursue the remedy with reasonable diligence at every available opportunity. Hence there is reasonable ground to think that the non-appearance was occasioned by the Appellant as he is not serious about the appeal and is deliberately trying to gain time. It is a well-accepted position that the accrued right of the opposite

party cannot be lightly dealt with. To be unmindful of the lackadaisical manner in which the appellant has proceeded in the matter, would also be contrary to public interest. We would also like to remind counsel that it is their professional responsibility to appear and represent their clients on the given dates irrespective of their repeated personal inconvenience. Members of the Bar have a bounden duty to assist the Tribunal in a timely manner.

4. We have gone through the appeal and find that this is a case where a refund claim was filed for an amount paid as Additional Duty of Customs. On scrutiny of the claim the department found that the description and specifications of the goods in the sales invoices were different from that of the Bill of Entry. The goods were liable for rejection for non-fulfillment of the condition of the notification no 102/2007-Cus dated 14/09/2007. Hence a Deficiency Memo was issued to the Appellant to explain the discrepancies. The Appellant however did not submit any proof of making good the deficiency. The claim was hence rejected. The Commissioner (Appeals) also rejected their appeal for non-compliance and non-replying to the 'Deficiency Memo'. Now before us the Appellant has not shown any urgency in having the matter heard and disposed of.

5. We have gone through the judgment of the Tribunal in the case of Pankaj Vs. CCE (supra) which has heavily relied on the judgment of the Hon'ble Supreme Court in the case of **Ishwarlal Mali Rathod vs Gopal** in SLP (Civil) Nos. 14117 & 14118/2021; **Babu Singh Vs. State of UP** – (1978) 1 SCC 579; **Shiv Cotex Vs. Tirgun Auto Plast (P) Ltd.** – (2011) 9 SCC 678; **Noor Mohammed Vs. Jethanand & Anr.**

– (213) 5 SCC 202, etc and has concluded **that there is no justification for adjourning the matter beyond three times which is the maximum number statutorily provided**. The extract from the judgment of Shiv Cotex (supra), is succinct and worth reproducing. It was held as under:-

> "14. … Is the court obliged to give adjournment after adjournment merely because the stakes are high in the dispute? Should the court be a silent spectator and leave control of the case to a party to the case who has decided not to take the case forward?
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> 15. It is sad, but true, that the litigants seek—and the courts grant—adjournments at the drop of the hat. In the cases where the Judges are little proactive and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation. It is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further. The case in hand is a case of such misplaced sympathy. It is high time that courts become sensitive to delays in justice delivery system and realise that adjournments do dent the efficacy of the judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit.
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> 16. No litigant has a right to abuse the procedure provided in CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system.
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> 17.… A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit—whether the plaintiff or the defendant—must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril."

6. Adjournments can't be given for the mere asking without any serious reason backed with proof for non-appearance of the Appellant or his authorised representative. Considering the statutory position and the views expressed by the Hon'ble Apex Court in the various judgments cited above, we find that no purpose would be served in continuing with this appeal and hence reject the same for default as

per Rule 20 of CESTAT (Procedure) Rules, 1982. The appeal is disposed of accordingly.

(Operative portion of the order was pronounced in open court)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

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