CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Customs Appeal No. 276 of 2010
(Arising out of Order-in-Original No.10403/2009 dated 24.12.2009 passed by the Commissioner of Customs, Chennai)

Stickwell (I) Pvt Ltd., **... Appellant**
No.4, Chowringhee Lane, Block 1 & 2,
Diamond Chambers, Suite No.51,
Kolkata 700 016.

VERSUS

Commissioner of Customs (Seaport-Export) **...Respondent**
Custom House, NO.60, Rajaji Salai,
Chennai – 600 001.

And

Customs Appeal No.277 of 2010
(Arising out of Order-in-Original No.10402 /2009 dated 24.12.2009 passed by the Commissioner of Customs, Chennai)

Sajal Impex Pvt Ltd., **... Appellant**
No.4, Chowringhee Lane, Block 1 & 2,
Diamond Chambers, Suite No.51,
Kolkata 700 016.

VERSUS

Commissioner of Customs (Seaport-Export) **...Respondent**
Custom House, NO.60, Rajaji Salai,
Chennai – 600 001.

APPEARANCE:
None for the Appellant
Ms. O.M. Reena, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)

FINAL ORDER Nos.40303-40304/2025

DATE OF HEARING/DECISION: 04.03.2025

Per M. Ajit Kumar,

None for the appellant.

2. When the matter came up for hearing on 4.3.2025, it was observed that there was no one to represent the appellant nor was there any request for adjournment. It is seen from case proceedings that these appeals pertain to the year 2010 and has come up for hearing on four earlier occasions. On the last date of hearing i.e. on 8.1.2025, the Ld. Advocate for the appellants sent an email indicating that the appellant had relinquished the vakalat and that their name may be removed from the record. Hence Registry was directed to issue notice by RPAD. It is seen that the notice sent by RPAD has returned undelivered with an endorsement 'no such person in this address'. The appellants have also not intimated any change of address and the notice was sent to the address provided by them in the CA-3 Form. Hence it is observed that the appellants are not interested in pursuing their appeal before this forum.

3. Smt. O.M. Reena, learned Authorized Representative appeared on behalf of the Revenue. She 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. She 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, she strongly prayed that the matter may be dismissed for default. She 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 her.

4. We find that the Division Bench of the Hon'ble Supreme Court in **Benny D'Souza & Ors vs Melwin D'Souza & Ors** [CIVIL APPEAL NO.

/2023 @ SLP (C) No.23809/2023, dated: 24/11/2023 / 2023 LiveLaw (SC) 1032], heard an appeal wherein the major contention of the appellant was that the High Court should have dismissed the appeal for non-prosecution in terms of the order XLI Rule 17 CPC and particularly the Explanation thereto instead of dismissing the appeal on merits. The Hon'ble Court after extracting **Order XLI Rule 17 of the CPC**, which reads as under:

> "**17. Dismissal of appeal for appellant's default** :- (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.
>
> Explanation. - Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits."

held that the Explanation to the Order categorically states that if the appellant does not appear when the appeal is called for hearing it <u>can only be dismissed for non-prosecution and not on merits</u> and went on to allow the appeal. [Also see: **Ghanshyam Das Gupta Vs Makhan Lal** - AIRONLINE 2012 SC 322; **Abdur Rahman & Ors Vs Athifa Begum & Ors -** AIRONLINE 1996 SC 621; **Musaliarakath Muhamad Alias Bava vs M.R. Ry. Manavikrama The Zamorin Rajah** - AIR 1923 MADRAS 13]

5. We find that Rule 20 of CESTAT (Procedure) Rules, 1982, states as under:

> **Rule 20. Action on appeal for appellant's default**. - Where on the day fixed for the hearing of the appeal or on any other day to which such hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal for default or hear and decide it on merits:
>
> Provided that where an appeal has been dismissed for default and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on

> for hearing, the Tribunal shall make an order setting aside the dismissal and restore the appeal."

We also note that the Rule provides that if the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing can set aside the dismissal and restore the appeal.

6. Considering the statutory position and the views expressed by the Hon'ble Apex Court in the various judgments cited above, adjournments can't be given for the mere asking without any serious reason, backed with proof, for the non-appearance of the Appellant or his authorised representative on the dates of public hearing. we find that no purpose would be served in continuing with these appeals and hence reject the same for default as per Rule 20 of CESTAT (Procedure) Rules, 1982. The appeals are disposed of accordingly.

(Dictated and pronounced in open court)

(AJAYAN T.V.)	**(M. AJIT KUMAR)**
Member (Judicial)	Member (Technical)

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