

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 40381 of 2016

(Arising out of Order-in-appeal No.351/2015 (STA-II) dated 27.11.2015 passed by the
Commissioner of Service Tax – II, Chennai)

M/s. Bhagirathi Agencies

No.59, V.P. Pillai Street,
Triplicane, Chennai 600 005

...Appellant

Versus

Commissioner of GST and Central Excise

Chennai Outer Commissionerate
Newry Towers, No.2054, I Block,
II Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040.

...Respondent

APPEARANCE:

None for the Appellant

Ms. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No.41236/2025

DATE OF HEARING/DECISION:03.11.2025

Per AJAYAN T.V.

When the matter came up for hearing on 03.11.2025, 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 2016 and has come up for hearing on four earlier occasions on 02.04.2025, 05.06.2025, 25.07.2025 and 21.08.2025. On 05.06.2025, finding that the appellant was not represented, the Registry was directed to issue notice by RPAD. On the last date of hearing, i.e., 21.08.2025, it was seen that the notice sent to the appellant has been returned with remarks 'no such person/company'. Therefore, Registry was directed to serve a notice of hearing on the appellant through the Department and the matter was adjourned to 03.11.2025. Today, the Ld. A.R has filed a letter GEXCOM/REV/MISC/1122/2024 dated 31-10-2025,

digitally signed by Anirudh R Gangavaram, Assistant Commissioner (R & T), Chennai North Commissionerate, stating that on visit to the premises of the appellant on 19-09-2025 by the officers of the concerned division, it was found that the door no. and street name mentioned in the notice do not correspond to any existing premises at the specified location. As there is no such door number found at the said address, the office was unable to proceed with the preparation of the Mahazar on the spot.

2. Ms. Anandalakshmi Ganeshram, learned Authorized Representative appeared on behalf of the Revenue. Ld. A.R. has submitted 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. Ld. A.R. has further contended that as per Rule 20 of CESTAT (Procedure) Rules, 1982, if the appellant does not appear on the date fixed for hearing, the Tribunal has the discretion to dismiss the appeal for default. Ld. A.R. strongly urged that given the lackadaisical approach of the appellant, the matter may be dismissed for default.
3. It is seen that the notice was sent by RPAD to the address provided by the appellant in the ST-5 Form has returned undelivered with an endorsement 'no such person/company'. There is no record of the appellants having intimated any change of address to the Registry of this Tribunal.
4. At this juncture, it would be apposite to reproduce the relevant statutory provisions, which are as under:

35C. Orders of Appellate Tribunal.-

(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal."

RULE 20 of CESTAT Procedure Rules, 1982 provide as follows:-

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.

5. In the decision of the Honourable Apex Court in ***ISHWARLAL MALI RATHOD VERSUS GOPAL AND ORS, 2021 (9) TMI 1301 - SUPREME COURT***, the Honourable Supreme Court has deprecated the practice of adjournments sought mechanically and allowed by the Courts/Tribunals. Hon'ble Supreme Court has observed as follows:

"5. Grant of repeated adjournments in routine manner and how it affects ultimately the justice delivery system as such came to be considered by this court in catena of decisions and asking/grant of repeated adjournments have been repeatedly condemned by this court.

5.1 In the case of Shiv Cotex v. Tirgun Auto Plast (P) Ltd. (2011) 9 SCC 678, it is observed and held in paragraphs 14 to 17 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?

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.

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.

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. It is seen that, the Apex Court has thereafter gone on to hold as under:

“ 5.5 Today the judiciary and the justice delivery system is facing acute problem of delay which ultimately affects the right of the litigant to access to justice and the speedy trial. Arrears are mounting because of such delay and dilatory tactics and asking repeated adjournments by the advocates and mechanically and in routine manner granted by the courts. It cannot be disputed that due to delay in access to justice and not getting the timely justice it may shaken the trust and confidence of the litigants in the justice delivery system. Many a times, the task of adjournments is used to kill Justice. Repeated adjournments break the back of the litigants. The courts are enjoying upon to perform their duties with the object of strengthening the confidence of common man in the institution entrusted with the administration of the justice. Any effort which weakens the system and shake the faith of the common man in the justice dispensation has to be discouraged. Therefore the courts shall not grant the adjournments in routine manner and mechanically and shall not be a party to cause for delay in dispensing the justice. The courts have to be diligence and take timely action in order to usher in efficient justice dispensation system and maintain faith in rule of law....”

7. We also note that the Rule 20 of the CESTAT Procedure Rules reproduced supra, 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.

8. We notice that there is no request on record for the appeal to be decided on merits ex-parte based on the grounds preferred in the appeal in the absence of the appellant's presence or representation through its counsel. We are of the view that if we were to decide the matter on merits, without having the benefit of hearing the appellant and upon such hearing if we were to hold against the appellant, then, having no locus to review our own judgement since we would be rendered functus officio, we would thus be not only depriving the appellant of a chance to be heard, but also would be relegating the appellant to seek appropriate remedy in a higher judicial forum, if at all the appellant has justifiable reasons for repeated non representation and also lack of representation today. Considering the statutory position and the views expressed by the Hon'ble Apex Court in the judgement supra that 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 coupled with the fact that the appellant is not to be found at the address given and also considering that

even after exhausting the prescribed methods of service, the appellant's whereabouts are not known, we find that no purpose would be served in continuing to keep this appeal pending. We are therefore of the considered view that the appellant is not interested in pursuing the appeal that has been preferred and that the appeal is thus liable to be dismissed for default.

9. In view of our discussions above, we dismiss the appeal for default as per Rule 20 of CESTAT (Procedure) Rules, 1982. However, liberty is granted to the appellant to file for restoration of the appeal showing sufficient justifications and reasons while seeking such restoration.

The appeal is dismissed for default.

(Order pronounced in open court on 03.11.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)
psd

(M. AJIT KUMAR)
MEMBER (TECHNICAL)