

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

Customs Appeal No. 170 of 2011

(Arising out of Order in Original No. 04/2011 (Customs) Commissioner dated 07.01.2011 passed by the Commissioner of Central Excise, Salem)

Dr. S. Shanmugasundaram

S/o Sri V.V. Subramaniya Chetty
No. 15/96, Chinnampatti Road
Ellampalli, Salem – 637 502.

Appellant

Vs.

Commissioner of Customs

No. 1, Williams Road, Cantonment
Trichy – 620 001

Respondent

APPEARANCE:

None for the Appellant

Smt. O.M. Reena, Authorised Representative for the Respondent

CORAM

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

Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40037/2026

Date of Hearing: 13.08.2025

Date of Decision: 09.01.2026

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Original No. 04/2011 (Customs) Commissioner dated 07.01.2011 passed by the Commissioner of Central Excise, Salem (impugned order).

2. None appeared for the appellant. We find that the matter has been adjourned on eleven occasions for non-appearance of the appellant either personally or through any authorized representative. Sufficient opportunity was granted to the appellant to state his case in person or thorough his authorised representative. Hence it appears that the appellant is not interested in pursuing the appeal remedy.

3. The Ld. Authorized Representative Smt. O.M. Reena appeared for the respondent and prayed that the appeal may be dismissed for non-prosecution as per Rule 20 of the CESTAT (Procedure) Rules, 1982.

4. We note that the Hon'ble Apex Court in the case of **Ishwarlal Mali Rathod vs Gopal & Others** [Special Leave Petition (Civil) Nos.1411714118 OF 2021, dated: 20.09.2021 / LL 2021 SC 500], while condemning the practice of seeking repeated adjournments has observed as follows:

“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. We are also aware that whenever the trial courts refused to grant unnecessary adjournments many a times they are accused of being strict and they may face displeasure of the Bar. However, the judicial officers shall not worry about that if his conscience is clear and the judicial officer has to bear in mind his duties to the litigants who are before the courts and who have come for justice and for whom Courts are meant and all efforts shall be made by the courts to provide timely justice to the litigants. Take an example of the present case. Suit was for eviction. Many a times the suits are filed for eviction on the ground of bonafide requirements of the landlord. If plaintiff who seeks eviction decree on the ground of personal bonafide requirement is not getting the timely justice and he ultimately gets the decree after 10 to 15 years, at times cause for getting the eviction decree on the ground of personal bonafide requirement may be defeated. The resultant effect would be that such a litigant would lose confidence in the justice delivery system and instead of filing civil suit and following the law he may adopt the other mode which has no backing of law and ultimately it affects the rule of law. Therefore, the court shall be very slow in granting adjournments and as observed hereinabove they shall not grant repeated adjournments in routine manner. Time has now come to

change the work culture and get out of the adjournment culture so that confidence and trust put by the litigants in the Justice delivery system is not shaken and Rule of Law is maintained.”

5. We also find that a 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 can only be dismissed for non-prosecution and not on merits and went on to allow the appeal. [Also see: **Ghanshyam Das Gupta Vs Makhan Lal** - AIR ONLINE 2012 SC 322; **Abdur Rahman & Ors Vs Athifa Begum & Ors** - AIR ONLINE 1996 SC 621; **Musaliarakath Muhamad Alias Bava vs M.R. Ry. Manavikrama The Zamorin Rajah** - AIR 1923 MADRAS 13]

6. When the appellant or his representative fails to appear for the hearing, the Tribunal is deprived of the assistance provided by them in framing the correct issue and bringing to notice the relevant points and judgments in their favour. This could prove fatal to the appellants’

appeal. 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.”

(emphasis added)

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 for hearing, can set aside the dismissal and restore the appeal. Hence an opportunity for the appellant to restore the appeal and be heard on merits if sufficient cause is shown for his non-appearance, remains.

7. Considering the statutory position and the views expressed by the Hon'ble Apex Court in the judgments cited above, adjournments can't be given for the mere asking without any serious reason, without being 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 currently 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.

(Order pronounced in open court on 09.01.2026)

Sd/-
(AJAYAN T.V.)
Member (Judicial)

Sd/-
(M. AJIT KUMAR)
Member (Technical)