CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 53775 of 2018 [DB]

[Arising out of Order-in-Original No.08/2017 dated 14.12.2017 passed by the Commissioner of Customs (Preventive), Jodhpur]

M/s. PAP Fast Movers I Ltd. **...Appellant**
B-163, Vidyut Nagar, Queens Road,
Jaipur, Rajasthan - 302021

VERSUS

Commissioner of Central Goods and Service Tax, Customs and Central Excise, Jodhpur - I, **...Respondent**
G-105, New Industrial Area,
Opp. Diesel Shed, Basni,
Jodhpur, Rajasthan - 342001

APPEARANCE:

None for the Appellant
Shri Rakesh Kumar, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 12.05.2023
DATE OF DECISION: 12.05.2023

FINAL ORDER No. 50785/2023

DR. RACHNA GUPTA

None is present for the appellant. The appeal pertains to the Year 2018. There have been several opportunities on record as given to the appellant to pursue the present appeal and to make the final submissions but it is observed that appellant has been negligent since beginning. It is vide the order dated 15.02.2023 when there was again an adjournment request by the appellant that this Bench while accepting the said request has mentioned as follows:

> "*List on **<u>March 03, 2023 on the top of the Board</u>**. It is made clear that if the appellant does not appear, the matter may be decided on the basis of records available.*"

Matter thereafter has again been taken on two successive dates i.e. 03.03.2023 and 13.04.2023. Today is the third opportunity after the said warning of 15.02.2023 and again the appellant is not present.

2. We also peruse that the appeal was dismissed for non-prosecution as well as on merits vide Final Order No. 51151/2019 dated 23.08.2009. However, thereafter, an application praying for setting aside of the said order and the restoration of appeal was moved. Keeping in view the ground mentioned in the said application that the counsel had sent a request for adjournment on 23.08.2019 which was dispatched by him through speed post on 17.08.2019. The said letter was received in the Registry of this Tribunal on 19.08.2019. Still it was not brought to the notice of the Bench on 23.08.2019 due to which the appeal was dismissed for non-prosecution. Observing that the said letter of appellant had escaped the attention of the Bench as it was not put up on the appeal record that the request of restoration of appeal was accepted and the appeal was again listed for final hearing. We observe that more than ten opportunities since then till date have already been availed by the appellant but appellant has not made the final submissions.

3. The above discussed entire circumstances are sufficient for us to hold that the appellant is not interested in pursuing the

impugned appeal despite several effective opportunities have been given to the appellant. Resultantly, we dismiss the appeal not only for want of prosecution but also on merits in the same manner as it was done vide final order dated 23.08.2019. The entire order is quoted as below:

> *"None is present for the Appellant. It is brought to the notice by learned Departmental Representative (Shri Rakesh Kumar) that:*
>
> 1. *The matter has been adjourned for more than eight numbers of times.*
> 2. *In fact, the issue involved herein stands already settled.*
> 3. *Present is the case of smuggling red sanders along with the consignment clearance whereof was got facilitated by the present Appellant as custom broker.*
> 4. *Penalty under Section 114(a) of Customs Act, 1962 as was imposed upon the appellant by the adjudicating authorities below stands confirmed even by this Tribunal vide the final order Nos. 56122 and 56127 of 2017 dated 22.08.2017.*
>
> *It is finally impressed upon that due to the aforesaid reasons there remains no merits in this case. As a result, the appellant is just gaining time by seeking adjournments in the matter.*
>
> *Keeping in view the said submissions and perusing the same as correct from the record, we are of the opinion that pendency of appeal cannot be allowed to be a ground for the appellant to avoid the illegality already noticed against him. Simultaneous absence of the Appellant for the day is sufficient for us to hold that he is not interested in pursuing the matter and is rather gaining time and the benefit of avoiding penalty already impressed upon him by keeping the appeal pending.*
>
> *As a result, we hereby dismiss the impugned appeal for intentional non-prosecution and also for the reason that appeal otherwise has no merits issue being already settled against assessee."*

4. The said observations are once again confirmed. Resultantly, the appeal stands dismissed on merits as well.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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