

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Miscellaneous Application No. 50401 of 2025
in
Service Tax Appeal No. 52875 of 2019

[Arising out of Order-in-Original No. 39/2017 dated 31.10.2017 passed by the Commissioner of Additional Directorate General (Adjudication), New Delhi]

M/s. J.N. Investments & Trading
Company Private Limited

...Appellant

Wind World Towers, Plot No. A-9
Veera Industrial Estate, Veera Desai Road,
Andheri (West), Mumbai

VERSUS

Additional Director General (Adjudication)-
New Delhi

...Respondent

DGCEI (Adj. Cell), West Block 8,
Wing No. 6, 2nd Floor, R.K. Puram,
New Delhi-66

WITH

Service Tax Miscellaneous Application No. 50400 of 2025
in
Service Tax Appeal No. 50197 of 2020

[Arising out of Order-in-Original No. 39/2017 dated 31.10.2017 passed by the Commissioner of Additional Directorate General (Adjudication), New Delhi]

M/s. Vish Wind Infrastructure LLP (VWILLP)

...Appellant

Formerly known as Vish Wind Infrastructure Limited,
Wind World Towers, Plot No. A-9
Veera Industrial Estate, Veera Desai Road,
Andheri (West), Mumbai

VERSUS

Additional Director General (Adjudication)-
New Delhi

...Respondent

DGCEI (Adj. Cell), West Block 8,
Wing No. 6, 2nd Floor, R.K. Puram,
New Delhi-66

APPEARANCE:

Ms. Pooja M. Rastogi and Shri Abhishek Rastogi, Advocates for the appellant
Shri Mihir Ranjan, Special Counsel for the respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 27.03.2025
DATE OF DECISION: **20.05.2025**

MISCELLANEOUS ORDER No. 50508-50509/2025

DR. RACHNA GUPTA

Present order disposes of miscellaneous applications filed by the appellants in Appeal Nos. ST/50197/2020 and ST/52875/2019. The applications have been filed after both the said appeals were reserved for orders vide order dated 13.03.2025.

2. We have heard learned counsel for the applicants-appellants. It is mentioned that the matter was listed for hearing on 13.03.2025 but due to unforeseen and unavoidable circumstances, the appellants' counsel was unable to appear before this Tribunal. The appellant was otherwise under the *bona fide* belief that the matter was part heard and would only be listed for final arguments before the same bench that had previously heard the appeals. The order dated 20.02.2025 has been impressed upon. It is mentioned that since the matter got listed before a different bench, it created confusion leading to the non-appearance of the counsel dealing with the matter.

3. It is also submitted that due to severe financial constraints, the appellants had to take an informed and *bona fide* decision to not to engage the counsel for hearing before a different bench under the belief that the matter would not proceed substantively without the original bench's presence. Impressing upon that the absence of representation on part of the appellant on 13.03.2025 was neither

deliberate nor intentional but was due to reasonable circumstances preventing appellants from effectively representing their case, the appellant has requested for an opportunity of being heard.

4. It is submitted that in absence of said opportunity, the order of this Tribunal will be an ex parte order and will be an order in violation of the principle of natural justice i.e. "Audi alteram partem" and it shall cause the serious prejudice to the appellant also for the reason that the present appeals involve substantial financial and legal consequences. With these submissions, learned counsel for both the appellants has prayed for recalling the order dated 13.03.2025 and to list both the appeals for fresh hearing on merits.

5. While rebutting these submissions, learned Special Counsel has mentioned that the appeals are pending consideration since 2019/2020. There have already been ample effective opportunities to both the appellants to make their respective submissions. It is mentioned that in the Year 2022, the appellant had requested for early hearing of the appeals. Their request was accepted but the appellant continued seeking adjournments on one pretext or the other, even on the pretext of placing on record certain documents. Sufficient time was given to the appellants thereafter also but neither the appellant made the submissions nor filed any document. The department has engaged the special counsel in the present matter but the arguments in the appeal could never be finalized. With these submissions and objecting any further opportunity to be

granted to the appellants, learned Special Counsel appearing for the department has prayed for dismissal of applications in both the appeals.

6. Having heard both the parties. We have foremost perused the order dated 13.03.2025. It reads as follows:

*"Learned counsel appearing for the appellant has requested adjournment. However, in view of the clarification/warning given vide the previous order dated 20.02.2025, the said request is hereby declined. Following the directions of Hon'ble Supreme Court in the case of **M/s. Jai Balaji Industries Vs. D.K. Mohanty & Another in Civil Appeal No. 5899 of 2021 decided on 01.10.2021**, the argument on behalf of the department heard and the matter is **reserved for orders.**"*

7. The order dated 20.02.2025, as relied upon in the above order, reads as follows:

"As a last opportunity list the appeal on March 13, 2025, the appeal shall be heard on merits and disposed of in the absence of the appellant."

8. Further perusal reveals that initially the appeals were filed without making payment of the amount of pre deposit. Vide order dated 29.01.2019, the appellants were granted four weeks' time to make the payment of amount of pre-deposit. The appellants did not comply with the said directions, however filed a writ petition before the Hon'ble High Court of Delhi. The Hon'ble High Court also directed the appellants to make the payment of pre deposit. The payment was made on 15.11.2019, whereafter the appeal got listed on 26.05.2022 in due course of listing. When the applicants moved an application seeking early hearing, their request was accepted

vide order dated 08.06.2022. Since then till date the learned Special Counsel for the department has been appearing regularly, however the proxy counsel on behalf of the appellants were appearing simply for sake of seeking adjournments. It is on 15.09.2023 that the compilation and submissions were placed on record by the appellant and arguments in part were heard on 20.10.2023. On the said date the matter was directed to be kept at top of board but the arguments did not conclude. On 14.02.2024, another miscellaneous application was filed seeking time to place on record the documents which was allowed on the same date. The appellants continued seeking adjournments without filing any documents rather requested for them to be heard by virtual mode. The said request was also accepted vide order dated 18.12.2024 when finally the order dated 20.02.2025 (as recorded above, was passed extending the warning of last opportunity).

9. The above observed facts from the record of order sheets makes it clear that ample effective opportunities were already been given to the appellants to put forth their submissions but they failed to do the same. Had the appellants were being facing the financial constraints, as is mentioned in the present application, they should not have sought for so many number of adjournments. The perusal also reveals that the matter has been placed before different benches at different occasions, hence the another contention of appellants being confused on 13.03.2025 due to their matter being listed before the different bench is also not sustainable. It is the

procedure of the Tribunal that all part heard matters stands released for fresh hearing before the regular bench unless otherwise specifically constituted by separate order by the Hon'ble president. We have perused the Order no. 42/2025 dated 25.02.2025 for ordering the sitting of benches commencing from 03.03.2025 to 28.03.2025 (relevant period) for CESTAT Delhi. The order was very much in public domain on the website of the CESTAT. The main contention of being confused due to sitting of a different bench is therefore not at all acceptable.

10. In the light of the above order and the above noticed circumstances, since the appellants themselves have been opting to not to make the final submissions, they are estopped from claiming the violation of principle of natural justice. They had otherwise, earlier filed their written synopsis. Hence, we do not deem it appropriate to extend another opportunity to the appellants to delay the proceedings under the garb of the principle "Audi alteram partem". With these observations, both the applications are hereby dismissed. However, keeping in view that it shall not be prejudicial to the interest of the department and shall rather serve the interest of justice if the appellants are given one single opportunity to place on record their entire submissions in writing with the documents, if any, in their support along with the compilation of the decisions which might support their case. We grant 10 days' time from the date of the present order to the appellants to place on record the written submissions with supporting documents/case compilation, if

any, with a copy thereof to the department. Another one week time is given to the department to file the counter submissions, if any. Both the applications stand disposed off with these observations. The main appeals stand reserved for orders.

[Order pronounced in the open court on **20.05.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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