

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT – IV

Service Tax Misc. Application No.

ST/MISC/50659/2018 in

Service Tax Appeal No. ST/90/2011 [DB]

[Arising out of Order-in-Appeal No. 350-CB-ST-JPR-II-2010 dated 13/09/2010 passed by the Commissioner (Appeals), Central Excise, Jaipur-II]

Nimbark Yatra Co.

...Appellant

Vs.

C.C.E. & S.T.-Jaipur-II

...Respondent

Present for the Appellant : Mr. D.P. Ojha, Advocate

Present for the Respondent: Mr. G.R. Singh, DR

**Coram: HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

Date of Hearing / Decision 14.12.2018

FINAL ORDER NO. 53469 / 2018

PER: RACHNA GUPTA

Arguments on Miscellaneous Application for setting aside the ex-parte Order No. 52129 of 2017 heard. Ld. Counsel appearing for the applicant has submitted that since the assessee had shifted to another residence and the notice for hearing would have been sent to the old address of Ajmer, the same could not have been served upon the assessee/applicant. The same is impressed upon to be the reason for the absence of the appellant before this Tribunal. The Order

No. 52129 of 2017 is accordingly prayed to be set aside and Appeal is prayed to be restored.

2. Per contra, Ld. DR has submitted that the Order which has been prayed to be recalled was earlier prayed to be recalled vide an application praying for restoration of Appeal dated 22.03.2018. The applicant failed to mark his presence for the said application as well and the application was also dismissed vide Order dated 11.06.2018. Accordingly, vide the present application the Order No. 52129 of 2017 cannot be recalled unless and until the subsequent Order No.50356 of 2018 dated 11.06.2018 is set aside. Application is accordingly is prayed to be dismissed.

3. After hearing both the parties and perusing the entire record we observe that the only ground taken by the applicant not only in the present application but in the previous application praying for restoration of the Appeal which was dismissed vide Final Order No. 52129 of 2018 has been "shifting to a new residence i.e. 427, Gyan Vihar Colony". The previous address is mentioned as Pattikatla, Ajmer. It has been impressed upon by the applicant that all the notices have been served on the previous address of Ajmer which became the genuine reason for not appearing before this Court. But the perusal of record shows that the Final Order No. 52129 of 2017 as well as the subsequent Order No. 50356 of 2018 have

been served at the changed address of Gyan Vihar Colony. The submission therefore is observed as apparently false on record. Though vide Order dated 29.10.2018 one opportunity has been availed by the appellant for a fresh notice to be served upon him.

4. Perusal of record further shows that the said notice has also been issued at Gyan Vihar Colony address. The same has been conceded to have been received. Accordingly, we find no reason for non acceptance of the previous notices at the same address as is impressed upon by the applicant. Reason therefore is held absolutely baseless. Rather the repeated absence is sufficient to hold that the appellant is not interested in pursuing the Appeal and the several Miscellaneous Applications are just a time seeking strategy.

5. It may be mentioned that as per the maxim *VIA ILATIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT*, law helps those who are vigilant and not those who go to sleep.

6. Also in view of Rule 20 which reads as follows:
Action on Appeal for appellant's default – Where on the day fixed for 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 or decide the same on merits.

7. Thus, we are of the opinion that there is no merit in the application and as such no reasonable explanation narrating the recall of any of the aforesaid orders. Application is accordingly dismissed. Resultantly, the Appeal stands dismissed.

[Dictated and pronounced in the open Court]

(BIJAY KUMAR)
MEMBER (TECHNICAL)
D.J.

(RACHNA GUPTA)
MEMBER (JUDICIAL)