

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Misc. Application No.50862 of 2018
in
Excise Appeal No. 52120 of 2016 [DB]

[Arising out of Order-in-Original No.25/PR.COMMR/CEX/IND/2015-16 dated 23.03.2016 passed by the Principle Commissioner, Indore]

M/s.Socrus Pharmaceuticals Limited **...Appellant**
Plot No.252, Sector-I , Pithampur 454775,
Dist. Dhar (M.P.)

VERSUS

Commissioner of Central Excise,
Customs and Service Tax, Indore **...Respondent**

APPEARANCE:

Shri Mihir Turakhia, C.A. for the Appellant
Shri R.K. Mishra, Authorised Representative for the Respondent

Coram: HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER No. 50857/2019

DATE OF HEARING : 10/05/2019
DATE OF DECISION: 10/05/2019

RACHNA GUPTA

The appellant herein is engaged in manufacture of medicaments and as such are registered with the Excise Department. After a search conducted by DGCEI in their factory premises, Regional Unit, Indore in the year 2007 that a show cause notice No.9781 dated 28.06.2013 was served upon the appellants

proposing the recovery of wrongly availed cenvat credit alongwith the interest and the appropriate penalties. The said proposal was confirmed by the original adjudicating authority vide order No. 25 dated 23.03.2013. Being aggrieved thereof that the present appeal was filed in the year 2016. However, after filing the same, the appellant has failed to take the appropriate steps to get the appeal disposed of on merits. In fact, opted to not to appear before this Tribunal. As a result thereof, the appeal was dismissed vide final order No.57462/2017 dated 25.10.2017.

2. It is thereafter that the appellant filed a Misc. Application praying for restoration of appeal on 27.02.2018. The appeal was restored vide order No.50240/2018 dated 03.05.2018. Perusal of record shows there had been almost eight adjournments since then that too on the request of the appellant except for once when the matter was adjourned for "No Court".

3. Today also when the matter was called up Shri Mihir Turakhia, C.A. for the appellant has requested one more adjournment for the final hearing of the appeal. The adjournment was heavily objected by the Id. D.R. It is apparent from the record that the appellant has been adopting delaying strategies since beginning. It is observed from record that instead of filing the reply to the show cause notice, the Hon'ble High Court was approached by the appellant. Subsequent thereto also, the appellant despite being provided a time of two months by the original adjudicating authority to submit reply, has neither filed any reply nor made any

other kind of representation rather had requested continuously for the adjournments for the purpose. The order in original was accordingly passed 'ex-parte'. The similar conduct continued even before this Tribunal, resulting into the final order of 25.10.2017. The order dated 03.05.2018 is an example of liberal consideration on the part of the Tribunal, exercised in the interest of justice to given another fair opportunity to the appellant to represent its case properly. But again the appellant, as already observed above, has not taken any diligent steps except for seeking adjournment.

4. From these observations, it becomes crystal clear that the appellant is not interested at all in pursuing their case. The amount of duty involved herein is more than 3.5 Crores. In these circumstances, we find no reason to accept the today's request of adjournment. We rely upon the case law in the case of **Ram Siromani Tripathi & Ors vs. State of U.P. & Ors in Civil Appeal No.9142-9144 of 2010 with Civil Appeal No. 6156 of 2012 dated 07 February, 2019**. It was held therein as:

"Mr. R.K. Ojha, learned counsel appears on behalf of the counsel for the appellants and submits that the learned counsel for the appellants is not present in the Court today. It is stated that he is out of station. This is no ground to seek adjournment. We therefore reject the request for adjournment. We have asked the learned counsel to argue the matter. He submits that he does not know anything about the case.

In these circumstances, we dismiss the appeals for non-prosecution.

We make it clear that since we have not found it to be a good ground for adjournment, under no circumstances, application for restoration shall be entertained.”

4. Resultantly, we hereby dismiss the appeal for non-prosecution.

[Operative part pronounced in the open Court]

(C.L. MAHAR)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita