CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, <u>MUMBAI</u>

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 85053 OF 2016

(Arising out of Order-in-Appeal No. 30/ST/NGP-II/2015/C dated 30.09.2015 passed by Commissioner of Customs, Central Excise & Service Tax, Nagpur-II)

M/s Jaika Motors Ltd. **.....Appellant**
Jaika Building, Commercial Road,
Civil Lines,
Nagpur – 400 001.

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Nagpur-II **.....Respondent**
Commissioner of Central Excise, Nagpur-II

<u>Appearance:</u>

None for the Appellant

Shri Nikhil P. Meshram, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. Sanjiv Srivastava, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85045/2020

Date of Hearing :16.01.2020
Date of Decision:16.01.2020

Per : SANJIV SRIVASTAVA

The matter was adjourned for today on 11.11.2019. On perusal of earlier Note Sheets and Hearing Notices in the matter following observations are made:

(a) Hearing notice dated 27.05.2019 fixed the date for hearing on 17.06.2019. Appellants neither responded to the notice nor appeared for hearing on the appointed date. Matter was thus adjourned to 30.07.2019.

(b) On 30.07.2019 there was no written requests made by the appellants nor they appeared for hearing, the matter was there by adjourned to 19.09.2019.

(c) On 19.09.2019 again story remain the same, matter got adjourned to 11.11.2019.

(d) Similarly it was adjourned on 11.11.2019 for today when the matter got listed before us.

2. We find that appellants have not responded to the notice issued to them for hearing in the matter or attended hearing any time when the matter was listed. Thus, it appears that they are not interested in pursuing this matter.

3. Hon'ble Supreme Court has in case of B.N. Bhattachargee [118 ITR 461] held that appeal does not mean only filing of memo of appeal but also pursuing it effectively.

4. Hon'ble Bombay High Court has in case of Chemipol Vs. Union of India [2009 (244) ELT 497 (Bom.) held as follows:

> ***"6.*** *It is thus clear that though part of the Rule 20 of the Rules has been held to be unconstitutional by the Delhi High Court relying upon the decision of the Supreme Court, we cannot altogether lose sight of the rule that every court or tribunal has an inherent power to dismiss a proceeding for non prosecution when the petitioner/appellant before it does not wish to prosecute the proceeding. In such a situation, unless the statute clearly requires the court or tribunal to hear the appeal/proceeding and decide it on merits it can dismiss the appeal/proceeding for. Of course, the power must be exercised judiciously and taking into consideration all the facts and circumstances of the case. The Tribunal presently has its benches only at four or five places in India. An appellant who on account of his place or residence or business being far away from the place of sitting for the Tribunal may not except at a high cost be able to attend the hearing especially when as we know that*

> *the matters are adjourned for several times. In such an event, if the appellant files on record his submissions in writing, the Tribunal must decide the appeal on merits on the basis of the said submissions. In that case, the Tribunal would not have a power to dismiss the appeal for but where the appellant inspite of notice is persistently absent and the Tribunal on facts of the case is of the view that the appellant is not interested in prosecuting the appeal, it can in exercise its inherent power to dismiss the appeal for non-prosecution. Of course, the conclusion of the Tribunal that the appellant is not interested in prosecuting the appeal must be reached on the facts of each case and not merely on account of absence of an appellant on a solitary occasion".*

5. Accordingly in terms of Rule 20 of the CESTAT (Procedure) Rules, 1982 after allowing more than three adjournments this appeal is dismissed for non-prosecution.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Sm.