CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Service Tax Appeal No. 85138 of 2016

(Arising out of Order-in-Original No. NSK-EXCUS-001-COM-003-15-16 dated 21.10.2015 passed by Commissioner of Central Excise & Customs, Nashik)

M/s. Sachin Rent a Car Service **Appellant**
Flat No.7, Kulswamini Apartment,
Pumping Road, Vise Chowk,
Gangapur Road, Nashik 422 008.

Vs.

Commissioner of Central Excise, Nashik-I **Respondent**
Kendriya Rajaswa Bhavan,
Gadkari Chowk, Old Agra Road,
Nashik 422 002.

Appearance:

None for the Appellant
Shri S.K. Hattangadi, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. **A/86750/2021**

Date of Hearing: 08.09.2021
Date of Decision: 08.09.2021

PER: BENCH

This appeal has been filed by the appellant against Order-in-Original No. NSK-EXCUS-001-COM-003-15-16 dated 21.10.2015 passed by Commissioner of Central Excise & Customs, Nashik. By the impugned order, the Commissioner has held as follows:

"ORDER

(i) The declaration dated 27.12.2013 filed by assessee in Form VCES-1 in terms of Section 107(1) of the Chapter VI of the Finance Act, 2013, read with the Service Tax Voluntary

Compliance Encouragement Rules, 2013, for an amount of Rs.34,440/- for the period from 01.10.2007 to 31.12.2012 is substantially false.

(ii) The Service Tax demand of Rs.1,17,130/- (Rs.1,13,719/- Service Tax + Rs.2,274 Edu. Cess + Rs.1,137/- S & H Edu. Cess) (Rupees One Lakh Seventeen Thousand one Hundred & thirty Only), is confirmed in terms of Section 73(2) of the Finance Act, 1994 and ordered for its recovery. The amount of Rs.25,000/- deposited by assessee on 23.03.2015, vide challan no. 00053472303201503240, is appropriated against Service Tax confirmed.

(iii) Interest at appropriate rate under Section 75 of the Finance Act, 1994 on the amount of service tax determined above at Sr. No. (i) above, is payable by assessee.

(iv) Penalty of Rs.58,565/- (Rupees Fifty Eight Thousand Five Hundred & Sixty Five Only) is imposed on assessee in terms of first proviso to Section 78 of the Finance Act, 1994 for reasons recorded hereinabove. However, the penalty shall be reduced to the extent of 25% of the amount of S. Tax confirmed under (i) above, in terms of 2nd & 3rd proviso to Section 78 ibid, if payment of service tax and applicable interest along with reduced penalty equal to 25% of Service Tax confirmed are paid within 30 days from the date of communication of the order.

(v) Penalty of Rs.20,000/- is imposed under Section 77(2) of the Finance Act, 1994 on the assessee for not filing periodical ST-3 Returns."

2.1 Appellant has filed this appeal challenging this order on various grounds stated in the appeal memo.

3.1 When the matter was called for hearing today, none appeared on behalf of the appellant. A perusal of the record shows that the matter has been earlier listed for hearing on

06.06.2019, 24.06.2019, 31.07.2019, 13.09.2019, 01.11.2019, 02.01.2020 and 21.02.2020 and on no occasion the appellant was either present himself of through his counsel.

3.2 Section 129 B (1A) of the Customs Act, 1962 reads as follows:

"129 B Orders of Appellate Tribunal

(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.*"*

3.3 Rule 20 of the CESTAT Procedure Rules, 1982 read as follows :

RULE 20. Action on appeal for appellant's default. *— Where on the day fixed for the 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 and decide it on merits :*

Provided that where an appeal has been dismissed for default and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the dismissal and restore the appeal."

3.4 From the above provisions it is quite evident that CESTAT can grant adjournment to either side in appeal for a maximum number of three times.

3.5 In this case whenever the matter has been posted for hearing, the appellant has chosen to abstain from hearing. He has not even cared to file any request seeking adjournment at any time. The conduct of the appellant clearly shows that he is not interested in pursuing this appeal.

4.1 In light of the above and the fact, the appellant is not pursuing his appeal, we dismiss the same for non-prosecution in terms of Rule 20 of the CESTAT (Procedure) Rules, 1982.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

tvu