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

Excise Appeal No. 928 of 2012

(Arising out of Order-in-Original No. 05-06/CEX/Comm./2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

M/s. Shiv Shakti Rolling Mills Pvt. Ltd. **Appellant**
C-57 to 63, Additional MIDC,
Jalna, Maharashtra.

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**
Town Centre, N-5, CIDCO, Aurangabad 431 003.

WITH

Excise Appeal No. 929 of 2012

(Arising out of Order-in-Original No. 05-06/CEX/Comm./2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

M/s. Matsyodari Steel & Alloy Pvt. Ltd. **Appellant**
D-32, Additional MIDC, Jalna, Maharashtra.

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**
Town Centre, N-5, CIDCO, Aurangabad 431 003.

WITH

Excise Appeal No. 930 of 2012

(Arising out of Order-in-Original No. 05-06/CEX/Comm./2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

Shri Vijay B. Mittal **Appellant**
Authorised Person of M/s. Matsyodari Steel
& Alloy Pvt. Ltd.,
D-32, Additional MIDC, Jalna, Maharashtra.

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**
Town Centre, N-5, CIDCO, Aurangabad 431 003.

WITH

Excise Appeal No. 931 of 2012

(Arising out of Order-in-Original No. 05-06/CEX/Comm./2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

Shri Vijay B. Mittal **Appellant**
Authorised Person of M/s. Matsyodari Steel
& Alloy Pvt. Ltd.,
D-32, Additional MIDC, Jalna, Maharashtra.

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**
Town Centre, N-5, CIDCO, Aurangabad 431 003.

WITH

Excise Appeal No. 932 of 2012

(Arising out of Order-in-Original No. 05-06/CEX/Comm./2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

Shri Deepak B. Mittal **Appellant**
Director of M/s. Matsyodari Steel & Alloy Pvt. Ltd.,
D-32, Additional MIDC, Jalna, Maharashtra.

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**
Town Centre, N-5, CIDCO, Aurangabad 431 003.

WITH

Excise Appeal No. 933 of 2012

(Arising out of Order-in-Original No. 05-06/CEX/Comm./2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

Shri Mukesh B. Mittal **Appellant**
Director of M/s. Matsyodari Steel & Alloy Pvt. Ltd.,
D-32, Additional MIDC, Jalna, Maharashtra.

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**
Town Centre, N-5, CIDCO, Aurangabad 431 003.

WITH

Excise Appeal No. 934 of 2012

(Arising out of Order-in-Original No. 05-06/CEX/Comm./2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

Shri Dhuji S. Kamad **Appellant**
Manager of M/s. Pooja Steel Industries &
M/s. Shree Steel Corporation,
C-12/1, Additional MIDC, Jalna, Maharashtra.

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**
Town Centre, N-5, CIDCO, Aurangabad 431 003.

WITH

Excise Appeal No. 935 of 2012

(Arising out of Order-in-Original No. 05-06/CEX/Comm./2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

Shri Shivprasad M. Mundhra **Appellant**
Accountant, M/s. Matsyodari Steel & Alloy P. Ltd.,
D-32, Additional MIDC, Jalna, Maharashtra.

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**
Town Centre, N-5, CIDCO, Aurangabad 431 003.

WITH

Excise Appeal No. 936 of 2012

(Arising out of Order-in-Original No. 05-06/CEX/Comm./2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

Shri Kishan Sadoramal Kukreja **Appellant**
Key Person of M/s. M.K.T. Trading,
Near Ganpati Mandir, Nath Baba Galli,
Jalna, Maharashtra.

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**
Town Centre, N-5, CIDCO, Aurangabad 431 003.

WITH

Excise Appeal No. 937 of 2012

(Arising out of Order-in-Original No. 05-06/CEX/Comm./2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

Shri Pramod Dhanulal Sawji **Appellant**
Key Person of M/s. Mahesh Steel,
B-18, Addl. MIDC, Jalna, Maharashtra.

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**
Town Centre, N-5, CIDCO, Aurangabad 431 003.

WITH

Excise Appeal No. 938 of 2012

(Arising out of Order-in-Original No. 05-06/CEX/Comm./2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

Shri Umesh Mulchand Oswal **Appellant**

Proprietor of M/s. Jinendra Steels,
T-394, Adinath Society,
Pune Satara Road, Pune

Vs.

Commissioner of Central Excise, Aurangabad Respondent
Town Centre, N-5, CIDCO, Aurangabad 431 003.

WITH

Excise Appeal No. 939 of 2012

(Arising out of Order-in-Original No. 05-06/CEX/Comm./2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

Shri Dinesh Satyanarayan Bharuka Appellant
Proprietor of M/s. Dinesh Steel and
Key Person of M/s. Ganesh Traders,
Ajintha Nagar, Jalna, Maharashtra.

Vs.

Commissioner of Central Excise, Aurangabad Respondent
Town Centre, N-5, CIDCO, Aurangabad 431 003.

WITH

Excise Appeal No. 940 of 2012

(Arising out of Order-in-Original No. 05-06/CEX/Comm./2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

Shri Sumit N. Sharma Appellant
Accounts Assistant, M/s. Matsyodari Steel & Alloy P. Ltd.,
D-32, Additional MIDC, Jalna, Maharashtra.

Vs.

Commissioner of Central Excise, Aurangabad Respondent
Town Centre, N-5, CIDCO, Aurangabad 431 003.

WITH

Excise Appeal No. 941 of 2012

(Arising out of Order-in-Original No. 05-06/CEX/Comm./2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

Shri Sumit N. Sharma Appellant
Accounts Assistant, M/s. Matsyodari Steel & Alloy P. Ltd.,
D-32, Additional MIDC, Jalna, Maharashtra.

Vs.

Commissioner of Central Excise, Aurangabad Respondent
Town Centre, N-5, CIDCO, Aurangabad 431 003.

WITH

Excise Appeal No. 942 of 2012

(Arising out of Order-in-Original No. 05-06/CEX/Comm./2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

Shri Samadhan K. Bhutekar **Appellant**
Weigh Bridge Operator,
M/s. Shiv Shakti Rolling Mills Pvt. Ltd.
C-57 to 63, Additional MIDC,
Jalna, Maharashtra.

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**
Town Centre, N-5, CIDCO, Aurangabad 431 003.

AND

Excise Appeal No. 943 of 2012

(Arising out of Order-in-Original No. 05-06/CEX/Comm./2012 dated 26.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

Shri Ramrao Sahebrao Waghmare **Appellant**
Accounts Assistant,
M/s. Shiv Shakti Rolling Mills Pvt. Ltd.
C-57 to 63, Additional MIDC,
Jalna, Maharashtra.

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**
Town Centre, N-5, CIDCO, Aurangabad 431 003.

Appearance:

Shri D.R. Gadekar, Consultant, for the Appellant
Shri Deepak Bhilegaonkar, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

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

Date of Hearing: 05.01.2023
Date of Decision: 05.01.2023

FINAL ORDER NO. A/85007-85022/2023

PER: SANJIV SRIVASTAVA

These appeals have been listed for hearing on many occasions earlier, i.e. 13.10.2021, 18.01.2022, 24.03.2022, 04.08.2022 and 09.11.2022. On these occasions either the appellants have sought adjournment or none appeared. On 18.01.2022 the Bench observed as follows:-

"The matter is adjourned to 24.03.2022 as a last chance at the request of appellants."

1.2 On 24.03.2022 counsel appeared and sought adjournment and the matter was adjourned to 04.07.2022. On 04.07.2022 there was no court and the matter was fixed for hearing on 04.08.2022 when none appeared and then the matter was adjourned to 09.11.2022. On 09.11.2022 the Bench directed as follows:-

"Written request for adjournment as Counsel for Appellant is out of station for medical treatment.

2. Matter has been adjourned on last so many occasions on similar request made by Counsel.

3. Adjourned as a last chance in interest of justice to 5th January, 2023. Medical Certificates of treatment of Counsel to be placed on record by the Appellant/Counsel."

1.3 Today when the matter was called for hearing, the appellant company and its director (i.e. appeal No. E/929 & 933/2012) by their letter dated 02.01.2023 sought adjournment stating that they wish to hire additional advocate. Their counsel, Shri D.R. Gadekar, Advocate, is also present today who is representing all the appellants as per record. As directed by the Bench on 09.11.2022, no medical certificate has been produced.

1.4 Section 35C(1A) of the Central Excise Act, 1962 provides as under:

"The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to 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."

1.5 In view of these provisions, the matter cannot be adjourned any further.

2.1 We have asked the counsel who is present today, to argue the matter, but he has expressed his inability to do so.

3.1 In a similar situation Hon'ble Apex Court has in case of Ram Siromani Tripathi, held as follows while dismissing the appeal.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 9142-9144 OF 2010

RAM SIROMANI TRIPATHI & ORS.
……………………………………..APPELLANT(S)
VERSUS
STATE OF U.P. & ORS.
…………………………………………………....RESPONDENT(S)

WITH

CIVIL APPEAL NO. 6156 OF 2012

O R D E R

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.

…………………….J. (A.K. SIKRI)

…………………….J. (S. ABDUL NAZEER)

…………………….J. (M.R. SHAH)

NEW DELHI,
FEBRUARY 7, 2019

3.2 Hon'ble Apex Court has recently in case of Ishwarlal Mali Rathod vs Gopal & Others vide order dated 20.09.2021 [in Special Leave Petition (Civil) Nos.1411714118 OF 2021] [LL 2021 SC 500], condemning the practice of seeking repeated adjournments and courts granting the same mechanically has observed as follows:

"5.5 Today the judiciary and the justice delivery system is facing acute problem of delay which ultimately affects the right of the litigant to access to justice and the speedy trial. Arrears are mounting because of such delay and dilatory tactics and asking repeated adjournments by the advocates and mechanically and in routine manner granted by the courts. It cannot be disputed that due to delay in access to justice and not getting the timely justice it may shaken the trust and confidence of the litigants in the justice delivery system. Many a times, the task of adjournments is used to kill Justice. Repeated adjournments break the back of the litigants. The courts are enjoying upon to perform their duties with the object of strengthening the confidence of common man in the institution entrusted with the administration of the justice. Any effort which weakens the system and shake the faith of the common man in the justice dispensation has to be discouraged. Therefore the courts shall not grant the adjournments in routine manner and mechanically and shall not be a party to cause for delay in dispensing the justice. The courts have to be diligence and take timely action in order to usher in efficient justice dispensation system and maintain faith in rule of law. We are also aware that whenever the trial courts refused to grant unnecessary adjournments many a times they are accused of being strict and they may face displeasure of the Bar. However, the judicial officers shall not worry about that if his conscience is clear and the judicial officer has to bear in mind his duties to the litigants who are before the courts and who have come for

justice and for whom Courts are meant and all efforts shall be made by the courts to provide timely justice to the litigants. Take an example of the present case. Suit was for eviction. Many a times the suits are filed for eviction on the ground of bonafide requirements of the landlord. If plaintiff who seeks eviction decree on the ground of personal bonafide requirement is not getting the timely justice and he ultimately gets the decree after 10 to 15 years, at times cause for getting the eviction decree on the ground of personal bonafide requirement may be defeated. The resultant effect would be that such a litigant would lose confidence in the justice delivery system and instead of filing civil suit and following the law he may adopt the other mode which has no backing of law and ultimately it affects the rule of law. Therefore, the court shall be very slow in granting adjournments and as observed hereinabove they shall not grant repeated adjournments in routine manner. Time has now come to change the work culture and get out of the adjournment culture so that confidence and trust put by the litigants in the Justice delivery system is not shaken and Rule of Law is maintained.

5.6 In view of the above and for the reasons stated above and considering the fact that in the present case ten times adjournments were given between 2015 to 2019 and twice the orders were passed granting time for cross examination as a last chance and that too at one point of time even a cost was also imposed and even thereafter also when lastly the High Court passed an order with extending the time it was specifically mentioned that no further time shall be extended and/or granted still the petitioner – defendant never availed of the liberty and the grace shown. In fact it can be said that the petitioner – defendant misused the liberty and the grace shown by the court. It is reported that as such now even the main suit has been disposed of. In view of the circumstances, the present SLPs deserve to be dismissed and are accordingly dismissed."

3.3 Rule 20 of the CESTAT Procedure Rule, 1982 reads as under:

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."

4.1 In view of the above decisions of the Hon'ble Apex Court and also taking note of Rule 20 of CESTAT Procedure Rule, 1982, we dismiss these appeals for non-prosecution.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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