

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

Customs Appeal No. 1016 of 2012

(Arising out of Order-in-Appeal No. 312/MCH/ADC/EP/2012 dated 08.06.2012 passed by the Commissioner of Customs (Appeals), Mumbai-I)

Shree Ramdev Metal Mart

E-2/9, Bharat Nagar,
Grant Road, Mumbai 400 007.

Appellant

Vs.

Commissioner of Customs (EP), Mumbai

New Custom House,
Ballard Estate, Mumbai 400 001.

Respondent

Appearance:

None for the Appellant

Shri Manoj Kumar, Assistant 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: 27.01.2023

Date of Decision: 27.01.2023

FINAL ORDER NO. A/85079/2023

PER: SANJIV SRIVASTAVA

None appeared for the appellant. The appellant was unrepresented on last several dates since 14.07.2022.

2.1 Heard the learned AR.

3.1 From the records it is observed that this appeal was earlier dismissed under Rule 20 of the CESTAT (Procedure) Rules, 1982 vide our order No. A/85183/2019 dated 23.01.2019 observing as follows:-

"None present for the appellant despite notice. Learned AR for the Revenue submits that the matter has been listed on 27.9.2018, 13.11.2018, 18.12.2018 and today, 23.1.2019. He submits that none appeared on behalf the appellant on the above dates nor there was any adjournment request.

2. *From the submission of the learned AR for the Revenue, it seems that the appellant is not serious in prosecuting the appeal before this forum. Accordingly the appeal is dismissed for non-prosecution."*

3.2 The appeal was restored vide order No. M/85464/2019 dated 15.04.2019 observing as follows:-

"This Application has been filed by the applicant for restoration of appeal which was dismissed for non-prosecution vide order dated 23/01/2019. Although so many reasons have been stated in this aforesaid application for non-appearance on 23/01/2019 but the crux of the matter is that according to the applicant although they have engaged the advocate to attend the matter, but the said advocate did not appear on the aforesaid date without giving any intimation to the applicant. We are satisfied with the reasoning given in the aforesaid application. Therefore, we are allowing the application and the appeal is restored to its number and the Registry is directed to list the appeal for hearing on its turn."

3.3 After restoration the matter got listed on 29.07.2019 and 03.09.2019 when none appeared. On 17.10.2019 the counsel for the appellant appeared and sought adjournment.

3.4 On 06.11.2019 the matter was heard and order reserved. Subsequently the matter was relisted for hearing on 01.04.2022 and adjourned to 21.04.2022. On 21.04.2022 the matter was adjourned in presence of counsel to 14.07.2022.

3.5 On 14.07.2022 the matter was adjourned on the written request made by the counsel. Thereafter the matter has been listed on 12.12.2022 and for today.

3.6 Rule 20 of the CESTAT (Procedure) Rules, 1982 provides 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."

3.7 Hon'ble Apex Court has in case of Ishwarlal Mali Rathod vs Gopal & Others vide order dated 20.09.2021 [in Special Leave Petition (Civil) Nos.14117-14118 of 2021] 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."

4.1 In view of above, the appeal is dismissed for default and non-prosecution in terms of Rule 20 of CESTAT (Procedure) Rules, 1982.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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