

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA**

Service Tax Appeal No.173 of 2008

(Arising out of Order-in-Appeal No.74-75/Pat/S.Tax/Appeal/2008 dated 25.06.2008 passed by Commissioner (Appeals) of Central Excise, Customs & Service Tax, Patna)

M/s Champion Hosiery Pvt. Ltd.

Prakash Market Chowk, 2nd Floor, Patna City-800008

Appellant

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Patna

C.R.Building (Annexe), Bir Chand Patel Path, Patna-800001

Respondent

Appearance:

None for the Appellant

Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI SANJIV SRIVASTAVA, TECHNICAL MEMBER

HON'BLE SHRI P. DINESHA, JUDICIAL MEMBER

FINAL ORDER NO.75398/2022

DATE OF HEARING : 25.07.2022

DATE OF DECISION : 25.07.2022

Per Sanjiv Srivastava :

When the matter was called for hearing, none appeared on behalf of the appellants. It is also seen from the record that they did not appear on 30.08.2019, 04.09.2019, 13.01.2020, 04.02.2020, 20.01.2022 & 25.07.2022 i.e. today.

2. Section 35C (1A) of the Central Excise Act, 1944, provides as follows :

"Section 35C : Orders of Appellate Tribunal –

(1A) 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."

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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. 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.14117-14118 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

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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

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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.”

5. From the above, it is seen that the matter has been adjourned more than three times. In the interest of justice, the appellants were allowed to appear and present this case before this Tribunal. From the above, it shows that the appellants are not interested in pursuing their appeal before this Forum.

6. In view of the above decision of the Hon’ble Apex Court and also taking note of the Rule 20 of CESTAT Procedure Rule, 1982, we dismiss this appeal for non-prosecution.

(Dictated and pronounced in the open Court)

Sd/

(Sanjiv Srivastava)
Member (Technical)

Sd/

(P. Dinesha)
Member (Judicial)

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