

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT – III

Excise ROA Application No. E/ROA/50513/2018[SM]
Excise Appeal No. E/51968/2017 [SM]

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-338-339-17-18 dated 17/10/2017 passed by the Commissioner (Appeals), CGST, Customs & Central Excise, Bhopal]

Primo Pick N Pack Pvt Ltd **...Appellant**

Vs.

**Commissioner Customs,
Central Excise & Service Tax,
Jabalpur** **... Respondent**

Present for the Appellant : Mr. R. K. Choudhary, Advocate

Present for the Respondent: Mr. K. Poddar, DR

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 24.07.2018

MISC. ORDER NO. 50456/2018

PER: RACHNA GUPTA

Application for restoration of Appeal heard. It is submitted by the Ld. Advocate for the applicant/ appellant that vide Order dated 09.04.2018. The Appeal has been dismissed in the absence of the applicant/ appellant. It is mentioned that the absence was due to the sickness of the previous Advocate. Impressing upon it as the justified cause for non appearance,

Ld. Advocate has prayed for the Appeal to be allowed and Application restored.

2. The Ld. DR while rebutting his arguments has submitted that the Order was pronounced after giving sufficient number of opportunities to the appellants. Otherwise also, the dismissal of Appeal is not *inlimini* but on the merits as well. Hence, there is no reason to restore the Appeal.

3. After hearing both the parties and perusing the record as well as the impugned order, I am of the considered opinion that after filing the Appeal, the appellant got himself absent at the stage when the matter was called for hearing, vide the Order dated 09.04.2018. Hon'ble Member has recorded specifically, more than three opportunities when the appellant did not appear despite the matter being called. There is nothing on record in the form of request for adjournment due to the sickness of the Advocate of the appellant. The said ground taken as on date therefore is not opined to be reasonable.

4. It is further perused that decision is not merely ex-parte rather the Hon'ble Member has specifically noted that issue arising out of present dispute is no more *res integra* in view of decision in the case of **SKD Lakshmanan Fireworks Industries Vs. C.C.E. & S.T., Tirunelveli 2016 (42) STR 359 (Tri. – Chennai)**.

5. In the given circumstance except for the mere wastage of precious public time restoration of Appeal will not suffice any purpose. Resultantly, the application in hand is dismissed.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

D.J.