

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CENTRAL EXCISE APPEAL NO.11 OF 2019

M/S ARIHANT TELECOMMUNICATION
THROUGH ITS PROPRIETOR

...APPELLANT

VERSUS

THE COMMISSIONER CENTRAL EXCISE
AND CUSTOMS, NASHIK

...RESPONDENTS

Mr. R.R. Chandak, Advocate for Appellant
Mr. D.S. Ladda, Advocate for Respondent-State

**CORAM : S. V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 9th OCTOBER, 2019

ORAL ORDER:

1. Mr. Chandak, the learned Counsel for the appellant submits that the appellant had preferred an appeal before the Custom Excise & Service Tax Appellate Tribunal (C.E.S.T.A.T), Mumbai. The advocate of the appellant on the date of hearing had expired. As such, the appeal is decided in absence of appellant.
2. Mr. Ladda, the learned Counsel submits that in view of the admitted position, the C.E.S.T.A.T. has rightly decided the appeal.
3. The order of the C.E.S.T.A.T. suggests that none remained present for the appellant, then the only recourse open to the C.E.S.T.A.T. was to dismiss the appeal for non-prosecution.

4. It is submitted that the advocate of the appellant had expired on the date of hearing and as such, could not appear before the C.E.S.T.A.T. The non-appearance of the appellant was for sufficient cause.

5. Considering the above, that the appellant was prevented because of the sufficient cause from prosecuting the appeal, we are inclined to grant one more opportunity to the appellant to put forth his case before the C.E.S.T.A.T.

6. In light of the above, the impugned order is quashed and set aside. The matter is remitted before the C.E.S.T.A.T.

7. The parties shall appear before the C.E.S.T.A.T. on 4th November, 2019.

8. In view of the fact that this Court has already given the date for appearance of the parties, it is not necessary for the C.E.S.T.A.T. to issue fresh notices. The parties shall co-operate in expeditious disposal of the appeal.

9. The Appeal is accordingly allowed. No costs.

[ANIL S.KILOR]
JUDGE

[S.V.GANGAPURWALA]
JUDGE

mta