IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CENTRAL EXCISE APPEAL NO. 1/2025
(M/s. Titan Company, Karnataka Vs. The Commissioner CGST & Central Excise, Nagpur II, Nagpur)

| Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders | Court's or Judge's orders |
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Mr. Sanjiv N. Kapoor, Advocate for appellant.
Ms. Preeti D. Rane, Advocate for respondent.

CORAM: ANIL L. PANSARE AND
M. M. NERLIKAR, JJ.

DATED : 22/08/2025.

Heard.

2. On 25.07.2025, following order was passed:-

*"Heard.*

*2. The following substantial question of law is framed:-*

*"A. Whether the CESTAT erred in dismissing the appeal for non-appearance of appellant or its counsel under Rules 20 of the CESTAT (Procedure) Rules, 1982 when the CESTAT had no power as per Section 35(C) of the Central Excise Act, 1944 to dismiss the appeal in default?"*

*3. Learned counsel appearing for respondent shall go through the judgment of the Hon'ble Supreme Court in the matter of* ***Balaji Steel Re-Rolling Mills Vs. Commissioner of Central Excise and Customs, (2014) 16 SCC 360****.*

*4. Stand over to 31.07.2025."*

3. Thus, the question before us is whether the Customs, Excise and Service Tax Appellate Tribunal ("CESTAT") could have dismissed the appeal for non-appearance of appellant or its counsel in terms of Rule 20 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982, ("Rules, 1982").

4. The Hon'ble Supreme Court in case of ***Balaji Steel Re-Rolling Mills Vs. Commissioner of Central Excise and Customs, (2014) 16 SCC 360*** held that Tribunal is empowered to pass order on appeal confirming, modifying or annulling decision or order appealed against or remand the matter but the Central Excise Act, 1944 ("Act of 1944") does not empower Tribunal to dismiss appeal for default or for want of prosecution in case appellant is not present when appeal is taken up for hearing. While rendering such findings, the Hon'ble Supreme Court has taken into consideration the provisions under Rule 20 of the Rules, 1982, which permits dismissing the appeal for default.

5. In the present case, the Tribunal has dismissed the appeal in terms of Rule 20 of the Rules, 1982. The Hon'ble Supreme Court has considered the effect of said Rule along with the provisions of the Act of 1944 to take a view that the Tribunal should have decided the appeal on merit, even if the appellant or his counsel was not present.

6. Learned counsel for the respondent has fairly conceded to the above legal proposition. In that view the matter and since the Tribunal has not decided the appeal on merits, but has dismissed the same as not prosecuted, the order is unsustainable. The question of law having been answered by the Supreme

Court, does not arise for consideration. Accordingly, the appeal is allowed in terms of prayer Clause "a" which reads as under:-

> "(a) Quash and set aside the orders dated 19/04/2023 (ANNEXURE-L) dismissing the appeal in default and 25/07/2024 (ANNEXURE-P) rejecting the application for restoration of appeal decided by the CESTAT."

7. Appeal stands disposed of in above terms.

**( M. M. NERLIKAR, J.)** **(ANIL L. PANSARE, J.)**

*Gohane*