

**(2016) 02 AHC CK 0293**

**ALLAHABAD HIGH COURT**

**Case No:** Central Excise Appeal No. 26 of 2016

Chandrawati Polymers (P) Ltd.

APPELLANT

Vs

Commissioner of C. Ex.,  
Ghaziabad

RESPONDENT

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**Date of Decision:** Feb. 11, 2016

**Citation:** (2016) 334 ELT 483

**Hon'ble Judges:** Tarun Agarwala and Vinod Kumar Misra, JJ.

**Bench:** Division Bench

**Advocate:** Siddharth Yadav and Rakesh Ranjan Agrawal, Counsels, for the Appellant;  
Ashok Singh, Counsel, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

1. The present appeal has been filed against the order of the Tribunal dated 9-4-2015 [2015 (323) E.L.T. 587 (Tri. - Del.)] dismissing the appeal filed by the appellant ex parte on merits.

2. From a perusal of the order of the Tribunal, we find that the Tribunal had proceeded to decide the matter ex parte under Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 (hereinafter referred to as the Rules). It was urged by the learned counsel for the respondent that there is no provision under Rule 20 or Rule 21 of the Rules for filing a recall application. For facility, Rule 20 and 21 of the Rules are extracted hereunder :

"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 nonappearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the dismissal and restore the appeal."

"Rule 21. Hearing of appeals ex parte.

- Where on the day fixed for hearing of the appeal or on any other day to which the hearing is adjourned the appellant appears and the respondent does not appear when the appeal is called on for hearing, the Tribunal may hear and decide the appeal ex parte."

3. Rule 20 of the Rules provides that on the date fixed for hearing of the appeal in case of non-appearance on behalf of the appellant, the Tribunal may, in its discretion either dismiss the appeal for default or hear and decide it on merits. The proviso to Rule 20 of the Rules indicates that where an appeal is dismissed for default and the appellant appears, thereafter, and makes sufficient cause for nonappearance, the Tribunal shall pass an order setting aside the dismissal and restore the appeal.

4. Rule 21 of the Rules provides for hearing of the appeal ex parte in case the appellant appears and respondent does not appear, when the appeal is called for hearing. Under this Rule, the Tribunal is entitled to hear and decide the matter ex parte in absence of the respondent.

5. Accordingly, since the appellant did not appear and the respondent was present, the Tribunal could have only proceeded under Rule 20 of the Rules. Even though, the proviso to Rule 20 of the Rules provides for moving a recall application only in the circumstances where the appeal is dismissed for want of prosecution, it does not mean that the ex parte order cannot be set aside when sufficient cause is shown by the appellant for non-appearance. The fact, that Rule 20 of the Rules does not expressly states that an order passed in an appeal, which is heard and disposed of ex parte on merits cannot be set aside does not mean that the Tribunal has no power to set aside an ex parte order. Rule 41 of the Rules gives wide power to the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or to secure the ends of justice.

6. In the light of the aforesaid provision, we direct the appellant to file an appropriate application for recall of the order. If such an application is filed, the Tribunal will consider and decide the same after hearing all parties concerned.

7. The appeal is dismissed with the aforesaid observation leaving it open to the appellant to challenge the impugned order of the Tribunal, if necessary, after the disposal of the restoration application.