IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CENTRAL EXCISE APPEAL NO. 3 OF 2015

The Maharashtra State Co-op. Marketing Federation Ltd. .. Appellant

Versus

The Commissioner of Central Excise & and Customs, Aurangabad. .. Respondent

Mr. S.A. Dhengle, Advocate for the appellant.
Mr. Alok Sharma, Advocate for the respondent.

CORAM : A.V. NIRGUDE &
V.K. JADHAV,JJ.
DATED : 27.02.2015

P.C. :-

1. Heard. This appeal challenges concurrent findings recorded by the authorities below that the original appeal filed by the appellant before the Commissioner was time barred. Section 85(3A) of the Finance Act permitted the Commissioner to entertain the appeal within two months and to condone the delay for appropriate reason up to one month. The appeal was not filed within this time but was filed beyond three months. The Commissioner dismissed the appeal being time barred. The Tribunal also confirmed the same.

2. Learned Counsel for the appellant tried to suggest that it was necessary for the Tribunal to consider the merits of the case and then ought to have remanded the case back. Learned Counsel also urged before us to do so at this stage.

3. We do not find any merit in this submission. Neither the Tribunal nor this Court would have authority to go into merits of the case once the appeal was found barred by the limitation. Section 85(3A) is a complete code in itself for condoning the delay etc. It has a limited operation. So, section 5 of the Limitation Act would not apply and therefore the Commissioner was really helpless and could not have entertained the appeal. Once the delay was not condonable, there is no question of we going into merits. The appeal does not give rise to any substantial question of law. The appeal is dismissed.

[V.K. JADHAV,J.] **[A.V. NIRGUDE,J.]**

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