IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

CIVIL APPLICATION NO.15464 OF 2013 IN
CENTRAL EXCISE APPEAL STAMP NO.34275 OF 2013

M/s Nirlep Appliances Limited ... APPLICANT

VERSUS

The Commissioner, Central Excise and
Customs, Aurangabad ... RESPONDENT

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Mr. R.S. Deshmukh, Advocate for applicant
Mrs. Kalpalata Bharaswadkar Patil, Advocate for respondent

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CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.

DATED: 25th March, 2015.

ORAL ORDER :

1. Mr. Deshmukh, learned counsel for the applicant submits that, the show-cause-notice was issued on 5.12.2000 from the office of Joint Commissioner, Central Excise & Customs, Aurangabad on the ground that M/s Duraware Pvt. Ltd., Plot No.8-21, M.I.D.C., Jalna is not entitled for benefit of exemption as provided in notification dated 20.2.1999. According to the

learned counsel, after hearing the parties, the show-cause-notice was dropped. Thereafter the Department filed an application for review. The said application for review was also dismissed after hearing the parties. According to the learned counsel, the applicant received a notice on 21.8.2013, stating that in view of the CESTAT Final Order dated 9.8.2012, the applicant is liable to pay Government dues which has been due from M/s Duraware Pvt. Ltd. It is only after receipt of this notice the applicant made an enquiry and got the knowledge that against the order passed in review, the Department has filed an appeal before the CESTAT. The said appeal is allowed. According to the learned counsel, no notice was served of the said appeal to the present applicant. The notice is issued in the name of M/s Duraware Pvt. Ltd. on the address of Jalna and the envelope which has been returned back unserved bears an endorsement, "Left, returned to sender". According to the learned counsel, in the year 2005, M/s Duraware Pvt. Ltd. became M/s Nirlep Appliances Ltd. According to the learned counsel, the place of the office has also changed to Plot No.B-5, M.I.D.C., Near Railway Station, Aurangabad. The learned counsel submits that, it is because of these reasons there is delay in filing the appeal before this Court. The applicant at no point of time was aware of the order passed by the CESTAT. Till the receipt of the notice from the office of the Superintendent (TR-1), Central Excise & Customs, Aurangtabad-I Division.

According to the learned counsel, the rights of the applicant with regard to the fiscal liability is involved in the appeal. The delay, as such, be condoned.

2. Mrs. Bharaswadkar, the learned counsel for the respondent - Department submits that, no sufficient ground is stated by the applicant nor the applicant at any point of time has given the intimation of the change of address in the proceedings. As the application is devoid of any sufficient cause, the application be rejected. Even on merits, the applicant does not have any case.

3. We have considered the submissions canvassed by the learned counsel for the respective parties so also averments made in the application and the affidavit-in-reply. On going through the affidavit-in-reply, it is manifest that the averments made in the application for condonation of delay regarding sufficient cause are not controverted.

4. We have perused the copy of the envelope filed along with the present application. The endorsement shows that the said envelope is returned to the sender on the ground that the addressee has left. Even it is stated that earlier M/s Duraware Pvt. Ltd. was having its address at A/21-24, Additional M.I.D.C.,

Jalna and after 2005, it has changed office to Plot No.B-5, M.I.D.C., Near Railway Station, Aurangabad so also the name has been changed to M/s Nirlep Appliances Ltd. The notice, pursuant to which the applicant claims to have knowledge, is also issued in the name of present applicant.

5. It is trite that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice has to be subserved.

6. Considering the reasons given in the application for condonation of delay, the applicant has made out a sufficient cause for condoning the delay. As such, the Civil Application is allowed. Delay caused in filing the appeal is condoned. No costs.

(A.I.S. CHEEMA, J.) (S.V. GANGAPURWALA, J.)

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