IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTARAL EXCISE APPEAL NO. 52 OF 2014
WITH
CENTRAL EXCISE APPEAL NO. 55 OF 2014

Maharashtra State Electricity	**}**	
Distribution Company Limited	**}**	**Appellant**
versus		
Commissioner of Central Excise	**}**	
Pune – III	**}**	**Respondent**

Ms. Sneha Phene i/b. M/s. Little and Co. for the Appellant.

Mr. Vijay H. Kantharia with Ms. Suchitra Kamble for the Respondent.

CORAM :- S. C. DHARMADHIKARI &
N.W.SAMBRE, JJ.
DATED :- FEBRUARY 12, 2015

P.C. :-

The Maharashtra State Electricity Distribution Company Limited, which is a successor in interest of Maharashtra State Electricity Board and now operational and functional under the Indian Electricity Act is before us, challenging the order passed by the Customs, Excise and Service Tax Appellate Tribunal dated 27th May, 2013.

2) Ms. Sneha Phene appearing for the Appellant would submit that there is a substantial question of law and arising from the

Tribunal's order. She submits that the Tribunal had before it a condonation of delay application, application for stay and dispensation of pre-deposit. However, the Tribunal has proceeded to dismiss the application for condonation of delay. The ground as has been set out in the order was satisfactory. There was vacancy in the position of Junior Manager (Accounts and Finance) from 1st July, 2011 to 23rd December, 2011. The order of the Commissioner of Central Excise (Appeals), Pune-III is dated 21st July, 2011. None were therefore attending the files and pertaining to the accounting and financial matters. The junior level officer did not possess the expertise and could not have taken a decision to challenge the order of the Commissioner of Central Excise (Appeals). Thus, there was bonafide ground for the delay occurring and taking place. Later on, when the competent official took over, prompt steps have been taken and that is why the delay deserves to be condoned. Though it is of 579 days, that was satisfactory explanation.

3) Mr. Kantharia learned Panel Counsel appearing for the Revenue would submit that there is absolutely no substantial question of law arising from the factual finding. The factual finding is not at all perverse. Not possessing knowledge of what is to be done further and in law cannot be a ground to condone the delay. Similarly, duty lapses and non availability of officials cannot be a ground by itself to condone

the delay. If there is a vacancy in a particular position does not mean that the files could not have been taken to the next level or the superior level officer and eventually to the legal department. Hence, finding of fact in para 4 does not raise any substantial question of law.

4) With the assistance both learned Counsel, we have perused the impugned orders and the contents of the applications, on which they were passed. We are not concerned with the merits of the Appeals, which were filed before the Tribunal. Suffice it to state that the application seeking condonation of delay mentions that there was a vacancy in the office of the concerned legal officer (page 89 para 3) and that is why the delay occurred. Before the Tribunal, it appears that the argument proceeded on the vacancy in the department of Finance and Accounts and particularly of the level of Manager. That Government departments and particularly on account of outsourcing of several functions are working with depleted staff strength. Similar is the position of the Maharashtra State Electricity Distribution Company Limited. Though the original Board has been divided and on functional lines, limited company has been established, yet, full staff strength has not been achieved. Similarly, in matters of taxation and particularly in Service Tax, there was somebody who could have applied his mind jointly with the legal department. The Finance and Accounts Manager

is a crucial post. Its vacancy during the relevant period was, in the given facts and circumstances, a vital element and factor. It is not as if the reason was found to be false or the Appellant was totally negligent and callous or has ignored the legal proceedings completely. In such circumstances, by imposition of costs, the discretion could have been exercised in favour of a statutory entity and authority like the Appellant before us.

5) In the light of the above conclusions, we are of the view that the Tribunal was in error while refusing to condone the delay. Its discretion has not been exercised fairly and reasonably. This itself is a substantial question of law, which merits the admission of the Appeals. They are accordingly admitted and with the consent of both Advocates, disposed of finally.

6) In the light of the above discussion, we proceed to condone the delay in filing of the statutory Appeals on condition that the Appellant/original Applicant in both Appeals before us shall deposit costs quantified at Rs.25,000/-. The costs quantified in both Appeals shall be paid to the Respondent within a period of 4 weeks from today. On the proof of the costs deposited being produced, the Tribunal shall restore the Appeals and the stay applications to its file. It shall then allow the Appellant to seek such reliefs as are permissible in law. We

would not grant any further extension in payment of the amount. Similarly, our order and direction does not mean that the Tribunal should condone any absence and particularly without any reasonable cause shown by the Appellant or their Advocates. The Advocates have assured us that they will fully co-operate with the Tribunal in early disposal of the stay applications, after restoration. Keeping open all contentions of the parties on the stay applications and the Appeals, we dispose of the present proceedings.

(N.W.SAMBRE, J.) **(S.C.DHARMADHIKARI, J.)**