

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

CIVIL APPLICATION (T) NO.16 OF 2015 IN CENTRAL EXCISE APPEAL NO. ____/2015.

M/s Enestee Engineering Pjvt. Ltd. Nagpur

..VS..

Union of India and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.Narayan Phadnis, Adv. for the applicant.
Mr.F.T.Mirza, Adv. for the respondent.

**CORAM : B.P.DHARMADHIKARI AND
P.N.DESHMUKH, JJ.**

DATED : SEPTEMBER 16, 2015.

The appellant in Central Excise Appeal preferred under Section 35G of Central Excise Act, 1944 has filed this application requesting to condone delay of 402 days in filing it.

Shri Phadnis, learned counsel for the applicant, states that after passing of impugned order dated 2nd of September, 2013, within period of limitation a Writ Petition was filed challenging that order, as advised. Writ Petition remained pending and notice was also issued to excise Department.

However, later on it was found that a statutory remedy of filing appeal is available and hence writ petition was disposed of as withdrawn with liberty to file the appeal. Accordingly, the appeal has been filed.

Advocate Mirza submits that when statutory remedy was available, filing of writ petition is a negligent act and therefore delay cannot be condoned.

We find that petitioner approached this Court against impugned order within reasonable time. This Court also took cognizance of said writ petition and issued notice to other side. Thus,

delay has been caused only because that petition remained pending for quite some time. This Court has thereafter permitted appellant to withdraw that petition and liberty has been given to file present appeal. If the period during which writ petition remained pending before this Court is excluded, the appeal is within limited.

As such, we allow CAT No.16 of 2015. Office to register Central Excise Appeal.

JUDGE

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