

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

C.A.T.NO. 29/2012 IN C.E.L.ST.NO.16633/2012.

The Commissioner of Central Excise and Customs, Nagpur.

VERSUS

M/s. Wardha Coal Transports, Chandrapur and another.

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

Court's or Judge's orders.

CORAM : B.P. DHARMADHIKARI
AND A.P. BHANGALE, JJ.

DATE : MARCH 03, 2015.

Heard Shri F.T. Mirza, learned Counsel for
the appellant / applicant and Shri S.N. Kapoor, learned
Counsel for respondent.

It is not in dispute that CESTAT decided
two appeals together on 23.11.2011. A common appeal
was then presented under Section 35(G) of the Central
Excise Act by the department within limitation.

According to the appellant – department,

having realized the error in filing of common appeal, one of the challenges has been withdrawn from that appeal and presented a fresh in this proceedings. As there is delay of about 86 days, the said delay is sought to be condoned by moving Civil Application No.29/2012.

Shri Kapoor, learned counsel appearing on behalf of the respondent no.1 assessee has tendered reply-affidavit. He submits that in the light of settled legal position and as the department is aware, filing of a common appeal as alleged, cannot be seen as an inadvertent error. He submits that in the process there is huge delay and as bonafides are lacking, delay cannot be condoned.

Fact that Appeal no. 7/2012, has been filed within limitation by the present appellant/ applicant, is not in dispute. There in challenge was to common judgment delivered by the CESTAT in two appeals.

In this situation, as the common judgment passed in both the matters was already questioned before this Court, we do not see any malafides. Delay

of 86 days in filing the appeal cannot be said to be inordinate delay in present facts. We therefore, condone the delay by allowing Civil Application No. 29/2012.

Office to register the appeal and place the same for admission along with Appeal No.7/12 and other connected matters.

JUDGE

JUDGE

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