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IN THE HIGH COURT OF DELHI AT NEW DELHI

CUSTOM A. 6/2015

**PRINCIPAL COMMISSIONER OF CUSTOMS
(ICD) NEW DELHI**

..... Petitioner

Through: Ms Sonia Sharma, Senior Standing
Counsel.

versus

SCI EXPORTS PVT. LTD.

..... Respondent

Through

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

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22.12.2015

CM No.32119/2015

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CM No.32118/2015

3. There is an extraordinary delay of 470 days in filing the appeal. The main reason adduced in the present application seeking condonation of the said delay is that there is a trifurcation of the Commissionerate and during such trifurcation records were misplaced and it took almost a year for reconstruction.
4. This Court is not convinced with the above explanation. The narration shows that the last date for filing the appeal expired on 21st September, 2014. In anticipation, certain correspondence was already in progress between the

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counsel and the Department. It is stated that a reminder letter was written to the Department on 15th July, 2014. However, the next date mentioned in the narration is a letter dated 19th May, 2015 sent by the Refund Section asking for the status of the CESTAT order. There is absolutely no explanation as to what steps were taken in the interregnum to follow up the matter between 15th July, 2014 and 19th May 2015.

5. Learned counsel for the Appellant placed reliance on the decision of the Supreme Court in *State of Nagaland v. Lipok AO 2005 (183) E.L.T. 337 (SC)*. The said decision was given in a criminal appeal and the Court observed that a "certain amount of latitude" in considering the government's explanation for the delay "is, therefore, not impermissible". However, subsequently, the Supreme Court has taken a much stricter view. In *Post Master General v. Living Media (2012) 3 SCC 563*, the Supreme Court observed as under:

"27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

6. In *State of UP through Executive Engineer v. Amar Nath Yadav (2014) 2 SCC 422*, the Supreme Court reiterated the above observations and rejected the plea of the State of UP for condonation of delay.

7. The Court is not satisfied in the present case that a satisfactory explanation has been offered by the Appellant for the extraordinary delay of 470 days in filing the appeal.

8. The application for condonation of delay is accordingly dismissed.

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9. Consequently, the appeal is dismissed.



S.MURALIDHAR, J



VIBHU BAKHRU, J

DECEMBER 22, 2015

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