IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1259 OF 2015

M/s Arihan Telecommunications, … **Petitioner**
Through its Proprietor,
shri prakash Jasraj Bothara
Age 65 years, occu: Business,
R/o Madhav Colony, Plot No.1,
Natraj Cinema Road, Dhule

VERSUS

1. The Unionof India
through its Secretary,
Central Excise and Customs
Department, New Delhi

2. The Commissioner, Central
Excise and Customs,
Gadkari Chowk, Nashik,
Tq. and Dist. Nashik

3. The Deputy Commissioner, … **Respondents**
Central Excise, Customs,
Service Tax, Jalgaon,
Taluka and Dist. Jalgaon

Advocate for Petitioner : Mr. Choudhari N. L.
Advocate for Respondents 2 and 3 : Mr. D. S. Ladda

CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.

DATE : 28th November, 2016

JUDGMENT (Per S. V. Gangapurwala, J):

1. We have heard Mr. Choudhari, the learned counsel for the petitioner and Mr. Ladda, the learned counsel for the respondents.

2. Rule. Rule made returnable forthwith. With consent of parties, the petition is taken up for final

disposal.

3. Grievance of the petitioner is that the appeal filed by the present petitioner before the Commissioner (Appeals) is dismissed on the ground that the same is not filed within limitation and the Commissioner has no power to condone the delay. Mr. Ladda, the learned counsel relies on the judgment of the Apex Court in the case of **Mohan and another Vs. State of Maharashtra and others, reported in AIR 2007 SC 2625** to submit that the subsequent corrigendum would not extend the period of limitation and the original declaration is only relevant for computing the period of limitation. The learned counsel also relies on the judgment of the Apex Court in the case of Bharti Cellular Ltd. Vs. Commissioner of Central Excise, Delhi, reported in 2006(3) STR 423, Escotal Mobile Communications Ltd. Vs. Union of India, reported in 2004(177) ELT 99, and AIRcell Digilink India Ltd. Vs. Commissioner of Central Excise, Jaipur, reported in 2004 (1973) ELT 31 and submits that the Commissioner (Appeals) has no power to condone the delay of more than 30 days.

4. In the present case, the order in original was passed on 31.10.2012 and the appeal was filed on 27.02.2013. It would be seen that after the order was

passed on 31.10.2012, there was some mistake in the order was noticed. Corrigendum was issued on 31.12.2012 for correcting the amount of penalty. Naturally the appeal period will have to be computed from the corrected date of the order as that is the order that would be executable. The said aspect is also considered by the Division Bench of Zarkhand High Court in the case of **Fast Track Tour and Travels Vs. Union of India**, reported in **2013 (295) ELT 36(Jhar)**, wherein it is held that the limitation would be counted from the date of corrigendum.

5. There cannot be any dispute with the proposition that the Commissioner (Apples) does not have any power to condone the delay beyond 30 days. However, if the Corrigendum is considered, then naturally the appeal would be within limitation.

6. Considering the above, the impugned order is quashed and set aside. The commissioner (Appeals) shall consider the appeal filed by the petitioner on merits.

7. Rule is made absolute in the above terms. No costs.

(K. L. WADANE, J.) **(S. V. GANGAPURWALA, J.)**

JPC