

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 2190 OF 2016**

The Commissioner of Customs,
Chennai V Commissionerate

....Petitioner

Vs.

Asset Reconstruction
Company India Ltd. & Anr.

....Respondents.

Mr. Jitendra B. Mishra for the Petitioner.

Mr. S.Dhorajiwala i/by Vidhi Partners for Respondent No.1.

**CORAM : ANOOP V. MOHTA AND
A.S. GADKARI, JJ.**

DATE : 5 DECEMBER 2016.

ORDER:-

The Petitioner, the Commissioner of Customs, Chennai-V Commissionerate, has challenged order dated 28 September 2015, whereby the learned Chairman, Debts Recovery Appellate Tribunal, Mumbai rejected the Appeal filed by the Petitioner, which resulted into the maintenance of order passed by the Debts Recovery Appellate Tribunal whereby, the Application for condonation of 207 days delay in filing the Appeal, was dismissed.

2 Heard the learned counsel appearing for the respective parties.

3 This is one of the case where the Department, though filed Appeal against common order dated 24 October 2013, within time, however, as objected by the Registry, the Appellant required to file two separate Appeals. Therefore, the Appeal Memo was corrected accordingly.

4 The issue was with regard to the Second Appeal in question, as there was delay of 207 days, the learned counsel has pointed out the circumstances, which caused delay in question. Those are mentioned in para 3 in details. After going through the same and considering the justification so made, we are of the view that the reasonable cause is shown. In any way, there is no intentional delay.

5 Therefore, taking overall view of the matter and in view of the Judgment of the Supreme Court in Collector, Land Acquisition, Anantnag Vs. Katiji¹ whereby, it is observed that the Application for condonation of delay made by the State Government and/or the Department needs to be considered liberally because ultimately the department would not be in any gain or benefit in delaying the Appeal

1 1987 AIR (SC) 1353

of this nature. It is specifically observed in para 6 that-

“6In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grate status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits.....”

6 Therefore, taking overall view of the matter and in the interest of justice, as sufficient case is made out, we are inclined to interfere with order dated 28 September 2015 passed by the DRAT in MA No. 764 of 2014. Accordingly, M.A. No. 764 of 2014 for condonation of delay in filing the Appeal is allowed. Appeal No. 231 of 2014 be heard on its own merits. All points are kept open.

7 Writ Petition is disposed of accordingly. No costs.

(A.S. GADKARI, J.)

(ANOOP V. MOHTA, J.)