

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 448 of 2016**

B.P. Gupta & Company 175-A, Light Industrial Area, Bhilai, Durg (CG)
Pin No.490026.

-----Applicant**Versus**

1. The Custom Excise and Gold (Control) Appellate Tribunal, West Block No.2, RK Puram, New Delhi-110066.
2. Commissioners of Custom & Central Excise, Raipur (CG).

---- Respondents

For Applicant	:	Shri Uttam Pandey, Advocate.
For Respondents	:	Shri Vinay Pandey, Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board**Per, Thottathil B. Radhakrishnan, CJ****03/04/2017**

1. We have perused the MCC and application seeking condonation of delay of 957 days in its institution.
2. The plea of the applicant is that, the writ petition was dismissed for default on 16.09.2013 though he had engaged Advocate Shri B.P. Mishra to appear for him in this case and that he had also obtained an interim order under which the applicant was enjoying order of stay on deposit of 1/3rd of amount covered by the order of Custom Excise and Gold (Control) Appellate Tribunal (for short, CEGAT) which is impugned in the writ petition. The further plea is that he obtained Annexure A/2, communication from the Superintendent of Central Excise & Customs, Range-II and it was only then that he knew that the litigation would have

suffered a jolt against him. He further states that he went to meet Advocate Shri B.P. Mishra and was then told by his son Advocate Brijesh Mishra that his father, after fairly long hospitalization, died in the month of December, 2014. The applicant is said to have thereafter entrusted the Advocate through whom this MCC and application for condonation of delay have been instituted.

3. We have perused the materials filed in support of the application, affidavit and the application. We have also heard the learned counsel for the applicant and the counsel for the revenue.
4. Annexure A/2 shows that it was issued on 11.03.2016. The writ petition was pending from 2003. The applicant does not say that he did not get any earlier communication from the department before receipt of Annexure A/2. That being so, Annexure A/2 is itself sufficient to notice that the department had issued at least three earlier letters dated 13.02.2015, 14.08.2015 and 30.11.2015 respectively after the writ petition was dismissed for default as per Annexure A/1 dated 16.09.2013. If that was so, we are unable to hold that there was such sufficient cause which permit us to condone the enormous delay in the institution of MCC and also to restore the writ petition No.769 of 2003 except on terms.
5. On consideration of the entire facts and circumstances of the case and the explanation of delay, we are of the view that ends of justice would be satisfied if the application for condonation of delay and the MCC are allowed on terms.
6. In the result, IA No.1, the application for condonation of delay, and MCC

No.448 of 2016 are allowed on condition that the applicant shall pay an amount of Rs.5000/- as cost payable within a period of two weeks to be accounted in the cost account of Chhattisgarh High Court (Middle income group) Legal Aid Society. If such cost is not paid within the time fixed herein, the application seeking for condonation of delay and MCC shall stand dismissed automatically.

7. Consequent to this order, if cost is paid, Writ Petition No.769 of 2003 would stand restored and shall be listed among motion hearing matters after three weeks.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(P. Sam Koshy)
Judge