Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 103 OF 2017

Mr. Elton Fernandes …Petitioner
Versus
Union of India, through the Secretary & Ors. …Respondents

AND

WRIT PETITION NO. 104 OF 2017

M/s. Progressive Earthmovers …Petitioner
Versus
Union of India, through the Secretary & Ors. …Respondents

AND

WRIT PETITION NO. 105 OF 2017

M/s. Domson Earthmovers …Petitioner
Versus
Union of India, through the Secretary & Ors. …Respondents

Mr R. K. Tomar, *Advocate, for the Petitioners*
Ms. Priyanka Kamat, *Advocate, for the Respondents.*

CORAM: G.S. PATEL &
NUTAN D. SARDESSAI, JJ
DATED: 16th August 2017

PC:-

1. In our view, all three matters can be disposed of at the admission stage and without having to go into the merits. We will take the facts as they appear in Writ Petition no. 103 of 2017. The facts in the other two matters are substantially similar.

2. It seems that without any assessment on merits of the Petitioners' appeal before the 2nd Respondent, that appeal was rejected under Section 35 of the Central Excise Act 1944 simply on the ground that there was a lapse of some days from date of receipt of an order impugned. This so-called lapse was less than thirty days beyond the sixty-day period allowed under Section 35.

3. In our view, the submission by the Petitioners that the 2nd Respondent had sufficient power to condone the delay up to one month, and that, in any event, the Appeal was brought within the mandated extensible period, is not disputed. The only dispute is that there was no formal application for condonation of delay. No opportunity was given to the Petitioners to file such an application for condonation of delay. Had this been a case before us, we ourselves would never have passed such an order of dismissal but at the very least would have allowed the Petitioners time to file a formal application. Indeed, it is our view that no such application is invariably necessary at all. An Advocate's statement made responsibly is sufficient to invoke the inherent powers and jurisdiction of a Tribunal that has to decide according to law.

4. The impugned Orders are set aside. The delay, such as it is, is condoned in each Appeal. The Commissioner of Central Excise (Appeal) is requested to hear the Appeal on merits and to render a reasoned decision within the period specified by law.

5. Parties will appear before the Commissioner of Central Excise (Appeal) on 21st September 2017. A slightly longer period is afforded only to accommodate Counsel for the Petitioners. There will be no extensions of time. All filings must be ready by that date.

6. The Petitions are disposed of in these terms. There will be no orders as to costs

NUTAN D. SARDESSAI J. **G. S. PATEL J.**