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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1446 OF 2017 IN
CENTRAL EXCISE APPEAL (L)NO.162 OF 2014

The Commissioner of
Service Tax, Mumbai-II ...Applicant
vs.
ISE Securities and Services Ltd. ...Respondent

Mr.M.Dwivedi i/b Mr.V.A.Bajpayee for the applicant
None for the respondent

CORAM : A.S.OKA, &
A.K.MENON,JJ.
DATE : OCTOBER 30, 2017

P.C.:

1 Heard the learned counsel for the applicant. Though the prayers made in this Notice of Motion may not be happily worded, we have heard the Notice of Motion on merits. It appears that the Notice of Motion No.958 of 2015 was filed in the present Central Excise Appeal by the applicant/appellant for condonation of delay of 291 days in the appeal. As objections in the said Notice of Motion were not removed, by order dated 12th October 2015 a conditional order was passed by the Division Bench of this Court. The order provided that on the failure of the applicant to remove office objections in the Notice of Motion within a period of four weeks from the date of the said order, the Notice of Motion will stand dismissed without further reference to the Court. Perhaps, the objections were not removed within the time specified under

order dated 12th October 2015. Therefore, Notice of Motion No.102 of 2016 was taken out by the applicant for restoration of the Appeal. The said Notice of Motion was taken out as the Prothonotary and Senior Master by order dated 18th September 2014 dismissed the Appeal for non removal of office objections. By order dated 25th April 2016, the said Notice of Motion was dismissed. Thereafter, a fresh Notice of Motion being Notice of Motion No.1694 of 2016 was taken out by the applicant. The said Notice of Motion was made absolute by order dated 17th April 2017 in terms of prayer clauses (a) and (b). The prayer clauses (a) and (b) of the said Notice of Motion read thus:

“(a) Condone the delay of 92 days in filing the present notice of motion
(b) To set aside order dated 12.10.2015 and to condone the delay of 291 days in filling the present Appeal.”

2 In the affidavit in support of the present Notice of Motion and in particular paragraph 9, it is stated that all office objections were removed by the applicant on 3rd May 2017 within the time granted under the order dated 17th April 2017. It is, however, stated that the Court Associate on 4th May 2017 raised an objection about the delay of 291 days in preferring the Appeal. Perhaps, the said office objection was raised by ignoring that the Notice of Motion No.958 of 2014 was already filed for condonation of delay in preferring the Appeal. As a

result of the Notice of Motion No.1694 of 2016 being made absolute, the Appeal stood restored.

3 Therefore, the present Notice of Motion is disposed of by passing the following order:

(I) We clarify that the Appeal (L) No.162 of 2014 is pending and even the Notice of Motion No.958 of 2014 is pending;

(II) Issue fresh notice on Notice of Motion No.958 of 2014 returnable on 30th November 2017. In addition to service of notice through Court, private service is permitted;

(III) Present Notice of Motion is disposed of on above terms.

(A.K.MENON,J.)

(A.S.OKA,J.)