**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 3033 OF 2016**
**IN**
**CENTRAL EXCISE APPEAL (L) NO. 111 OF 2014**

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| **The Commissioner of Central Excise, Pune-III** | } | **Applicant** |
| **versus** | | |
| **M/s. India Land Infrastructure Development Pvt. Ltd.** | } | **Respondent** |

Mr. Swapnil Bangur with Mr. Sham V. Walve for the applicant.

Mr. Jas Sanghavi i/b. M/s. PDS Legal for the respondent.

**CORAM :- S. C. DHARMADHIKARI &**
**PRAKASH. D. NAIK, JJ.**
**DATED :- APRIL 24, 2017**

**P.C.** :-

1. This is a Revenue's motion for setting aside the conditional order passed. That conditional order was passed on 18th September, 2014 invoking a specific Rule in the Bombay High Court (Original Side) Rules. Rule 986 was invoked and the conditional order was passed on 18th September, 2014 in several appeals. We have on record at pages 7 and 8 an order passed in about 82 appeals. That order reads as under:-

> "The Appellant and /or his Advocate to remove office objections on the Appeal and get the same numbered and regd. on or before 16/10/2014, failing the Appeal to stand rejected under O. S. Rule 986."

2. Such an order is sought to be set aside by the Revenue by filing the instant motion and there is a delay of 776 days in filing the motion.

3. An affidavit in support initially filed sets out only one cause and that is that the office objections were not removed. The office objections could not be removed because the panel of the advocates representing the Revenue was changed. It took some time to engage new panel counsel. The new panel counsel was briefed in the matter and later on the Revenue officials got in touch with him/her, on account of which, the precise nature of the office objections and consequences of the conditional order came to the notice of the Service Tax Department.

4. On the earlier occasion, we had, in some cases refused to condone the delay because of the peculiar situation and understanding prevailing in the Service Tax Commissionerate at Pune. Now, Mr. Bangur appearing for the appellant tenders an additional affidavit and which is affirmed by the Commissioner of Service Tax, Pune. In para 3 of this affidavit, the deponent states that the present appeal was filed by this Commissionerate, but from October, 2014, there was a restructuring of Pune-III Commissionerate and earlier Pune III Commissionerate was trifurcated into Pune III, Pune IV and Pune Service Tax

Commissionerate. Pursuant to the restructuring, the matters pertaining to service tax belonging to Pune III Commissionerate were transferred to the newly formed Pune Service Tax Commissionerate. As a result of the trifurcation, the correspondence pertaining to Service Tax Commissionerate was sometimes mis-sent to Pune III Commissionerate and their office was not in a position to obtain the communications received from the Legal Coordination Cell Superintendent, particularly the conditional order of the Registry of this court. Further, he boldly states that there was no record in the case files regarding the nature of the office objections and therefore, no steps could be taken by his office to remove the office objections. Then, it is stated that Notice of Motion No. 209 of 2014 filed for condonation of delay of 133 days was made absolute by this court on 27th April, 2015. That is why the Pune Service Tax Commissionerate was under a bonafide belief that the case was still alive in the High Court.

5. Thereafter, what is set out is that because of appointment of fresh panel of advocates and by an order of 9th June, 2016, it is after the directions and advise of the new panel counsel that the present notice of motion has been filed on 3rd December, 2016.

6. Thereafter and surprisingly, in para 6, this gentleman refers to the correspondence of the Legal Coordination Cell with the then panel advocates. Thus, he justifies that there have been departmental communications, but the earlier panel of advocates were not responding to the same.

7. After hearing Mr. Bangur and Mr. Sanghavi, we are astonished by the understanding of this Service Tax Commissioner and particularly of the provisions of law. None should insist that he must be made aware of law for the law is presumed to be known immediately after the same is notified. Particularly the senior level officers, who are affirming the affidavits ought to know that there is nothing like separate communication from the Registry about the office objections. The office objections are set down on the original files. It is the duty of the advocate filing an appeal either for the Revenue or the advocate for the assessee to take note of the office objections and promptly comply with them. Once they are endorsed on the original files and which files are always available for inspection, then, it is futile to urge that the precise nature of the office objections was unknown. If in one paragraph this deponent says that Pune Service Tax Commissionerate was re-organised and restructured and it was unable to obtain the copies of the

communications from the Legal Coordination Cell, then, in para 6, how he deposes about the correspondence carried out by this Cell with the then panel of advocates has not been clarified at all.

8. We caution the advocates appearing for the Revenue that they are first the officers of the court. They ought not to dance to the tune of the senior level officials and particularly the Service Tax Commissionerate in Pune. If any advice and opinion tendered is being misconstrued and used against them, then, it is for them to decide whether to continue and render their service to the Revenue. Secondly, this Commissioner ought to know that there cannot be any justification for not visiting the Registry and seeking inspection of the files, particularly in matters involving a huge tax liability but rely only on some communication from the advocate. No litigant can say and as of right that because I have handed over the papers to advocate, it is not my duty to follow up the matter. We are using such harsh words for we have noticed that in matters after matters the Pune Service Tax Commissionerate seeks to justify its lapses particularly without disclosing when the trifurcation took place, which files were lost and who in the hierarchy could not communicate with them. There are no particulars, but vague statements placed on record. In the present case, there are 82 matters, which are disposed of

by a common order by the Registry. In all of them, no compliance with the procedural rules was made. If tomorrow all the Commissionerates and Commissioners or high ranking officials place before this court such causes or reasons for condoning the erroneous delay, they should be reminded at once that they are not special litigants. The Government is not a special litigant nor the Tax Department or the Revenue.

9. In these circumstances, we condone the delay in the larger interest of justice and because some steps have been taken to set right the state of affairs, we allow this notice of motion. There would be no order as to costs.

**(PRAKASH.D.NAIK, J.)** **(S.C.DHARMADHIKARI, J.)**