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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **CEAC 16/2017 & C.M. No. 21398/2017 (stay)**

SHRI KRISHNA AGENCIES ..... Petitioner
Through: Mr. Manoj Sharma, Mr. Alok Singh, Mr. Vivek Kumar, Mr. Deepak Shukla and Mr. Pritam Kothadiya, Advocates

versus

COMMISSIONER CENTRAL EXCISE, DELHI ..... Respondent
Through: Mr Harpreet Singh, Senior Standing Counsel with Ms Namrata Bharti, Advocates

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>
% **22.08.2017**

<u>C.M. No. 21399/2017 (delay of 1825 days in filing)</u>

1. There is an extraordinary delay of 1825 days in filing the present appeal which is preferred against the order dated 14th October 2011 passed by the Customs, Excise and Service Tax Appellate Tribunal ('CESTAT').

2. The present case has a chequered history. A Show Cause Notice ('SCN') was issued to the Appellant on 26th July 2007 as to why Cenvat Credit of Rs.1,74,10,417/- should not be denied in respect of the clearance made by the Appellant with payment of Central Excise Duty. The said demand was confirmed by the order dated 22nd October 2008. An appeal was filed by the Appellant before the CESTAT along with an application seeking the waiver

of the pre-deposit amount. This application was dismissed by the CESTAT by an order dated 30th April, 2009 and the Appellant was directed to deposit the entire amount within six weeks and the matter was fixed on 15th June 2009 for compliance. On account of the failure of the Appellant to make the payment of pre-deposit amount, the appeal was dismissed by the CESTAT by order dated 15th June 2009.

3. It appears that the Appellant filed an application for recall of the above order in June 2009 before the CESTAT itself. However, by its order dated 14th October 2011, the CESTAT declined to restore the appeal. This subsequent order passed by the CESTAT has been challenged in the present appeal.

4. At the outset, it was pointed out to Mr. Manoj Sharma, learned counsel for the Appellant, that without challenging the order dated 30th April 2009 passed by the CESTAT, it would serve no purpose if the Appellant challenged only the order dated 14th October 2011 passed by the CESTAT, declining to recall the order dated 15th June 2009. Further, if the delay is computed with reference to the order dated 30th April 2009 of the CESTAT, then clearly the delay in filing the present appeal would be far beyond 1825 days.

5. Be that as it may, when asked to explain this extraordinary delay, learned counsel for the Appellant drew the attention of the Court to the medical certificates issued showing that the Sole Proprietor of the Appellant was undergoing some medical treatment in the years 2005, 2006 and 2009. It is sought to be explained that the father of the Proprietor was diagnosed with

cancer sometime in 2009. He ultimately expired in 2011. Therefore, the Proprietor of the Appellant was busy and could not pursue the filing of an appeal.

6. It is also pointed out that the Appellant filed a writ petition being W.P. (C) No.1409/2017 before this Court challenging the aforementioned order dated 14th October 2011 of the CESTAT, which came to be dismissed as withdrawn on 17th March 2017 on the ground that the Appellant should file an appeal against the said order instead of a writ petition. In said order, it was noted that an appeal was earlier filed in this Court some time in 2012 but was returned under office objection and thereafter not re-filed.

7. Learned counsel for the Appellant referred to a case status report to show that the appeal filed by the Appellant in 2012 was returned to the counsel and not re-filed thereafter. Learned counsel for the Appellant has no satisfactory explanation as to why the Appellant did not follow up the above appeal filed in 2012 and why he waited till 2017. The only explanation now offered is that not entertaining the present appeal would have grave consequences for the Appellant.

8. While that is understandable, the indulgence of the Court cannot be granted to a litigant who is far from diligent in pursuing his remedies. It is plain that, at every stage, the Appellant did not care to follow up the matter diligently and, in such circumstances, the Court is not inclined to condone the extraordinary delay of 1825 days in filing the present appeal.

9. The application for condonation of delay of 1825 days in filing the appeal

is dismissed. Consequently, the appeal is also dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 22, 2017
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