

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14308 of 2016

Oriental Aromatics Limited .. Petitioner
Versus
Union of India and Anr .. Respondents

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Mr.Prakash Shah i/b PDS Legal for the petitioner.

Mr.Swapnil Bangur with Pooja V. Thorat with Shreedevi Kotkar, Anukul Seth i/b Pooja Thorat for respondent nos.2 and 3.

**CORAM: S.C. DHARMADHIKARI &
SMT.BHARATI H.DANGRE,JJ.**

DATED : 12th FEBRUARY, 2018

P.C :-

1 By the order under challenge, the Tribunal has dismissed the petitioner's application seeking condonation of delay of 665 days approximately.

2 The Tribunal held that the petitioner was grossly negligent, and therefore, by its conduct, it is disentitled to seek a discretionary and equitable relief of condonation of

delay. On a reading of the application for condonation of delay, copy of which is at page 97 of the paper book, we are unable to agree with the Tribunal. Once the Tribunal attributes to the petitioner appellant, a conduct which disentitles it from claiming any discretionary and equitable relief, then it is the bounden duty of the Tribunal to first refer to the cause shown if it is not sufficient and the petitioner is grossly negligent, then the discretion exercised by the Tribunal will never be interfered with in our extra-ordinary jurisdiction. Our extra-ordinary jurisdiction under Article 226 is equally discretionary and equitable.

3 However, we find that the petitioner appellant filed the appeal before the Tribunal aggrieved and dissatisfied with the order dated 3rd December 2013 passed by the Commissioner of Central Excise, Daman. A copy of that order was served on the petitioner appellant on 5th December 2013. The last date of filing of appeal was 5th March 2013.

4 However, the appellant petitioner before us says that there was a show cause notice issued on 28th July 2011. That was adjudicated and the duty demand along with interest and penalty was confirmed. That order of the adjudicating authority was sustained by the First Appellate Authority. Then, the petitioner appellant preferred an appeal before the Tribunal's Bench at Ahmedabad along with the said application. The Tribunal's Ahmedabad Bench passed an order on 27th November 2012 unconditionally allowing the stay application. That appeal was pending before the Tribunal. Thereafter, the petitioner appellant was served with several show causes notices, details of which are set out in paragraph no.1 of the application seeking condonation of delay. The show cause notices are on the same issue. The show cause notices have been contested. The show cause notices earlier to the present show cause notice and subsequent to the show cause notice were made subject matter of Appeals and the Appeals are pending before the Tribunal's bench at Ahmedabad.

5 It is stated that some of the Appeals before the Tribunal were dismissed on the ground of non-compliance with the order of pre-deposit. However, there was an order passed on 24th September 2013 remanding the matter to the First Appellate Authority with the direction to decide the issue afresh. Thereafter, the petitioner attended the hearing before the First Appellate Authority who passed the order impugned in the subject Appeal before the Tribunal. The employee of the petitioner-appellant Mr.Satish Mahyavanshi in the ordinary course, forwards a copy of the Order-in-original and thereafter, the appellant-petitioner's Advocate is instructed to file Appeal. However, during the period December 2013 to March 2014, the factory of the petitioner appellant was undergoing shifting process from Somnath, Daman Union Territory to Ambernath in Maharashtra. The concerned employee was, therefore, held up in this work of relocation of factories. He lost track of the matter for several months. It is on account of the lapse on the part of this employee of the appellant petitioner that the present appeal could not be filed in time.

6 However, all other appeals were filed in time and
appeals subsequent to the order in original dated 3rd
December 2013 have also been filed in time.

7 This was the only matter which was left out, but
for reasons which are bonafide.

8 There is an affidavit which has been filed by the
concerned employee Mr.Satish, which affidavit was also
annexed for perusal of the Tribunal to the application seeking
condonation of delay.

9 It is strange that the Revenue does not file any
counter to this application before the Tribunal. Before us, the
Revenue is suddenly moved in filing an affidavit, but that too
on merits of the controversy.

10 We do not see, therefore, any reason for the
Tribunal to discard the version of the petitioner-appellant
and term it either as false or vitiated by utter negligence. If

gross and utter negligence is writ large on the proceedings, then the Tribunal should have noted, and carefully the fact that the appellant has been regularly contesting the show cause notices and bring Appeals to the Tribunal, all of which except the subject one were filed in time. A grossly negligent litigant would not be conducting itself in this manner. Before you doubt the bonafides of a litigant and term the version as insufficient for condoning the delay, a Court of law like a Tribunal must find out from its own record atleast any contrary version of the Revenue. If there is no version of the Revenue contravening this factual position, or is any conduct attributable as negligent can be culled out during the course of the proceedings otherwise, then, the Tribunal in its over enthusiasm, and possibly obsessed by disposal mania, decide appeals pending before it in this casual and light hearted manner. Courts of Law are not set up for mere disposal of cases. Courts of Law are established for adjudication of cases, particularly appeals so as to render justice to parties in accordance with law. If parties deserve substantial justice, then that has to be rendered. If parties deserve a fair and just

opportunity of placing their version on merits before the last fact finding authority, they should not be ordinarily denied the same and in this perfunctory manner. The Tribunal can always balance the rights and equities and while condoning the delay, ensure compensation by payment of costs.

11 Precisely, that is what we propose to do when we set aside the order under challenge, we allow the petition, we direct that in the event the petitioner appellant pays costs quantified at Rs.25,000/- as condition precedent within a period of four weeks from today, on production of proof of such tender or payment, the Tribunal shall condone the delay in filing the appeal.

12 The Appeal shall then be restored to its file for adjudication on merits and in accordance with law.

13 Rule is made absolute accordingly.

(SMT.BHARATI H. DANGRE,J)

(S.C.DHARMADHIKARI)