*Sharayu Khot.*

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

**CENTRAL EXCISE APPEAL NO. 16 OF 2018**

**Team Global Logistics Private Limited ...Appellant**

***Versus***

**The Commissioner of Service Tax – V ...Respondent**

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Mr. Bharat Raichandani a/w Ms. Ankita Vashistha i/by UBR Legal, for the Appellant.

Mr. M. Dwivedi, for the Respondent.

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**CORAM : M.S. SANKLECHA & RIYAZ I. CHAGLA, JJ.**

**DATE : 26 September 2018**

**ORDER :**

Sharayu Pandurang Khot

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**1.** This Appeal under Section 83 of the Finance Act, 1994 (for short "***the Act***") read with Section 35G of Central Excise Act, 1944 challenges the order dated 15th November 2017 passed by the Customs, Excise and Service Tax Appellate

Tribunal (for short "***the Tribunal***").

**2.** By the impugned order dated 15th November 2017, the Petitioner's Application for condonation of delay in filing an Appeal from order dated 13th January 2016 was dismissed.

**3.** The Appellant urges the following question of law forf our consideration:-

(A) Whether in the facts and circumstances of the case and in law was the Tribunal correct and justified in dismissing the application for condonation of delay?

**4.** The Appeal is admitted on the above question, as it does give rise to substantial question of law.

**5.** At the request of the parties, the Appeal itself is taken up for final disposal, as the scope of the dispute is narrow.

**6.** The brief facts leading to this Appeal are:-

(i) The Commissioner of Service Tax on 13th January 2016 passed an order confirming the service tax of Rs. 24.83 Crores as for the period from October 2009 to September 2011. The above order dated 13 January 2016 also imposed penalty upon the Appellant;

(ii) The Appellant was of the view that the order dated 13th January 2016 (received on 2nd March 2016) is without jurisdiction and would warrant interference of this Court in its extra ordinary jurisdiction under Article 226 of the Constitution of India. Thus, filed a Writ Petition being Writ Petition No. 1724 of 2016 (Team Global Logistics (P) Limited Vs. UoI) on 4th May 2016;

(iii) However, by an order dated 30th March 2017, this Court refused to entertain the above Writ Petition No. 1724 of 2016 filed by the Petitioner. This on the ground that there is an efficacious alternate remedy available to the Petitioner therein i.e. the Appellant herein by way of Appeal to the Tribunal;

(iv) The Appellant applied for certified copy of the order on 21st April 2017. It was received on 27th April 2017. Thereafter, the Appellant filed an Appeal to the Tribunal along with a condonation of delay Application on 26th May 2017;

(v) On 5th November 2017, the impugned order of the Tribunal dismisses the condonation Application on the ground that the provisions of Section 14 of the Limitation Act, 1963 and/or the principle thereof is not applicable to the statutory Appeals filed under the Finance Act, 1994 read with Central Excise Act, 1944. Besides the impugned order holds that there was delay of almost a month in filing the Appeal and condonation Application on 26th March 2017 from 27th April 2017 i.e. after the date of receipt of the order dated 30th March 2017 which was passed by this Court dismissing the Appellant's Writ Petition No. 1724 of 2016. This delay the impugned order finds unreasonable on the ground that the Appellant was agitating the issue before the High Court for over a year, therefore, the Appellant should have kept its Appeal to the Tribunal ready and filed it with the Tribunal no sooner the High Court dismissed its Writ Petition No. 1724 of 2016.

**7.** The impugned order dated 15th November 2017 of the Tribunal held that the principles contained in Section 14 of the Limitation Act, 1963 i.e. exclusion of time spent *bonafide* in prosecuting a proceeding before a forum which does not have jurisdiction is inapplicable to statutory appeals. This has now been rejected by the Supreme Court in ***M.P. Steel Corporation Vs. Commissioner of Central Excise***[1]. It has held that the principle of Section 14 of the Limitation Act, 1963 is applicable even when in respect of statutory Appeals filed before the Tribunal from the orders passed by the Collector of Customs (Appeals) under the Customs Act, 1962. Thus, the period of time spent in prosecuting the Petition against the order dated 13th January 2016 of the Commissioner of Service Tax has to be excluded while computing the period of limitation in filing an Appeal before the Tribunal. Undisputedly, the period between 4th May 2016 to 30th March 2017 was spent *bonafide* before this Court in prosecution of Writ Petition No. 1724 of 2016.

**8.** Thus, from the record it is clear that the Writ Petition No. 1724 of 2016, was filed against the order dated

1 ***2015(319) ELT 373 (S.C.)***

13th January 2016 (received on 2nd March 2016) within the three months for filing an Appeal to the Tribunal under Section 35B(3) of Central Excise Act, 1944. In fact it was filed in 4th May 2016. Thus, there is 28 days available. Thereafter, if one excludes the delay in obtaining the certified copy of the High Court order, the Appeal to the Tribunal is filed after consuming 51 days. Thus, if one excludes the 28 days available from the 51 days, the Appellant has to explain 23 days delay. This delay was held to be not sufficiently explained by the impugned order only on the ground that as the Petitioner whose Petition is pending in the High Court for over a year, the Appellant should have been ready with their Appeal to the Tribunal and filed it immediately after the High Court refused to entertain their Petition. The aforesaid basis of the rejection of the application for condonation of delay was not justified as the explanation offered for the delay viz. preparing the Appeal to file it to the Tribunal is reasonable. A party who prosecutes a Writ Petition *bonafide* expecting to succeed cannot be expected to keep preparing for an alternate remedy even before his Petition is rejected. Further, the Apex Court has repeatedly held that a liberal approach should be adopted while deciding an application for condonation of delay. (see ***Collector Vs. Mst Katiji 28 ELT 185***). Therefore, in the present facts, we find that the Appellant has sufficiently explained the delay.

**9.** Thus, the substantial question of law is answered in the negative i.e. in favour of the Appellant-Assessee against the Respondent-Revenue.

**10.** In the above view, we set aside the impugned order of the Tribunal dated 15th November 2017. We condone the delay in filing the Appeal from the order dated 13th January 2016 of the Commissioner of Service Tax to the Tribunal and direct the Tribunal to consider the Appellant's Appeal on merits.

**11.** Appeal disposed of in above terms.

**[RIYAZ I. CHAGLA J.]** **[M.S. SANKLECHA, J.]**