Sharayu Khot.

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

NOTICE OF MOTION NO. 670 OF 2018

IN

CENTRAL EXCISE APPEAL (L) NO. 140 OF 2016

The Commissioner of CGST & Central Excise	**...Applicant/ Appellant**
Versus	
M/s. Twenty First Century Wire Rods Ltd.	**...Respondent**

Mr. Pradeep S. Jetly, a/w Mr. J.B. Mishra, for the Applicant/Appellant.

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

DATE : 25 October 2018

ORDER :

1. Shri. Jetly, the learned Counsel appearing in support

of the Motion, states that the Respondents have been served and undertakes to file Affidavit of Service within a week from today.

2. This Motion seeks condonation of 639 days delay in taking out this Motion to set aside the order dated 25th August 2016 passed by the Prothonotary & Senior Master rejecting the Appeal under the Rule 986 of the Bombay High Court (Original Side) Rules for non removal of the office objections.

3. We perused the Affidavit in Support of the Motion. The Affidavit in support states that as there was change in panel counsel handling the matters for the Excise Department in the month of June 2016. The earlier counsel engaged, ceased to be on the panel since 2016. Thereafter, in 2017 with effect from 1st July 2017, the Goods and Service Tax Act, 2017 came into force resulting in reorganisation of the department. Thus, in the above view, the Affidavit states that there is a delay in taking out the Motion seeking to set aside the order dated 25th August 2016 passed by the Prothonotary & Senior Master.

4. We find that the Affidavit in Support does not state that it was not informed and/or not aware of the dismissal of its Appeal in August 2017. Nor does the Affidavit indicate the date when the Respondent for the first time came to know about the date of the rejection of Appeal by the Prothonotary & Senior Master. This date is crucial for considering whether the delay in making out this Application is required to be condoned or not. The change of panel advocates does not absolve that the officers of the Revenue to keep themselves abreact of the proceedings in this Court and/or taking appropriate steps to appoint new advocate for the first panel. Not taking steps in the above regard is itself evidence of negligence on the part of the Revenue.

5. In fact, this Court in ***Commissioner of Income Tax Vs. Reliance Industries Limited***[1] while dealing with a direct tax Appeal had made the following observations:-

> "*8. We have found that if the number of appeals filed*

1 ***[2017]84 Taxmann. Com 313 (Bombay)***

by the Revenue are approximately thousand per year or more, then, we expect the Revenue to appoint and depute responsible officials and to follow up the legal cases and matters in this Court. The officers cannot pass on the buck to some junior level employees or clerical staff. This is routinely happening inasmuch as the Departmental heads have not been attending the cases by taking a periodical review of the proceedings or appeals lodged in this Court. They hand over the papers to Advocates and thereafter are not bothered about the outcome of these appeals. It is for the Revenue or the Department to take the necessary action but they do not feel obliged to do so. They expect this Court to condone serious lapses in their functioning by accepting above cause as sufficient. The cause as set out and the explanation as forwarded today, on affidavit and belatedly, reflects total negligence and callousness of the Revenue officials. Their attitude shows that they are not at all vigilant and interested in pursuing the cases filed by the Department involving a tax effect of crores of rupees. They expect the Court to be lenient and *liberal and pardon them every time. It is this approach of the Revenue officials which is not only strongly deprecated in the earlier order but this Court has refused to uphold it after it was noticed that this is the position in almost every matter.*

9. This is no explanation for the delay of 1371 days and if for all these years the Revenue officials have not noticed the lodging, filing or pendency of an appeal, a conditional order of the Registry, then, it must set its own house in order by sacking and removing the delinquent and negligent officials or penalising them otherwise so as to subserve larger public interest. If they are found to be hand-in-glove with the assessee and adopt such tactics deliberately, then, we do not think that the Court is responsible for the same. The Registrar (O.S.) has been drawing up a list and notifying the appeals regularly and intimating the parties and their Advocates through the High Court website that they must attend to these cases or else all consequences including dismissal without adjudication on merit, will follow....."

The aforesaid observations apply equally to the present facts.

6. In the above view, we are not satisfied with the reasons set out in support of the Applicant to condone the delay as it evidences negligence on the part of the Revenue. Accordingly, the Motion is dismissed.

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