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

NOTICE OF MOTION NO. 247 OF 2018
IN
CENTRAL EXCISE APPEAL (L) NO. 122 OF 2015

The Commissioner of CGST & Central Excise,
Daman Commissionerate ... Applicant.

In the matter between :

The Commissioner of CGST & Central Excise,
Daman Commissionerate ... Appellant.

v/s.
Jai Corporation Ltd.. … Respondent.

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

CORAM : M. S. SANKLECHA And
RIYAZ IQBAL CHAGLA,JJ.

DATED : SEPTEMBER 07, 2018.

P.C.

1. None appears for the Respondent despite service of notice.

2. This application seeks condonation of 746 days delay in filing this Motion to sets aside the self-operating order dated 10.12.2015 passed by the Prothonotary and Senior Master, rejecting the applicant's appeal under Rule 986 of the Bombay

High Court (O.S.) Rules. This for failure to remove office objections on or before 07.01.2016, as directed by the above order dated 10.12.2015.

3. We have perused the affidavit in support of the Motion filed by Mr. Sanjay Mukhopadhyay, Assistant Commissioner of Central GST & Central Excise, Daman dated 16.02.2018. The only reason for the delay of 746 days, as set out in the affidavit is the frequent transfers of officers of the applicant department. In that view the follow up of this appeal after its filing, it states, is lost sight of and is, therefore, could not be pursued. It is stated that as new GST Act, 2017 came into force, the entire department concerned was reconstituted and no proper steps could be taken to get set aside the order dated 10.12.2015. Although the affidavit states that the department learnt about dismissal of the appeal some time in December, 2017 on the official website of this court, no particulars of how and in what circumstances the website of the court was visited and the reason why it was not visited earlier. The reason given by the department is not a sufficient explanation for the delay caused in moving this Motion. In fact it evidences negligence on the part of the applicant.

4. In fact, this court in ***Commissioner of Income Tax Vs. Reliance Industries Ltd. (2017) 84 Taxmann.com 313*** has observed as under : -

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

5. The aforesaid observations apply on all fours to the present facts. The transfers of the officers of the department does not absolve the Revenue from prosecuting its appeal with sincerity and vigilantly. The reasons given in the affidavit in support of the Motion do not inspire confidence and it evidences the casual manner in which the Revenue prosecutes its appeal before this court.

6. Thus in view of the above, we see no reason to condone the delay of 746 days for setting aside the order dated 10.12.2015 passed by the Prothonotary and Senior Master.

7. Accordingly, the Notice of Motion is dismissed.

(RIYAZ IQBAL CHAGLA,J.) **(M.S. SANKLECHA, J.)**

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