Sharayu Khot.

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

NOTICE OF MOTION NO. 577 OF 2018
IN
CENTRAL EXCISE APPEAL (L) NO. 98 OF 2018

The Commissioner of Central Tax & Central Excise	**...Applicant/ Appellant**
Versus	
Brihanmumbai Municipal Corporation	**...Respondent**

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

Mr. Benni M. Chatterji, Senior Counsel, a/w Ms. Pooja Yadav, for the Respondent.

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

DATE : 19 October 2018

ORDER :

1. This Motion has been taken out for condonation of 203 days delay in filing the Appeal from the impugned Order

dated 17th March 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (for short “***the Tribunal***”).

2. We have perused the Affidavit of Shri. Rahul Raichur, Assistant Commissioner of CGST & Central Excise, Commissionerate, Mumbai South dated 18th June 2018 in support of the Motion.

3. The impugned order dated 17th March 2017 was received by the Applicant on 4th May 2018. Thereafter, approval from the superior authority was received on 21st June 2017. However, before the Appeal could be filed to this Court, there was restructuring of the Respondent in view of introduction of Goods and Service Tax regime in place of Central Excise and Service Tax regime. This resulted in the Applicant receiving files *inter alia* from the Commissioner of Service Tax, Mumbai – 1. It was during search of the files which were so assigned to the Applicant Commissionerate on introduction of the GST regime that these papers were located

and Appeal filed.

4. Shri. Chatterji, the learned Senior Counsel appearing for the Respondent, opposes the condonation Application. In support of his submission to dismiss the Application, he relies upon the decision of this Court in ***Additional Commissioner of Sales Tax Vs. Kayany Bakery, Pune***[1].

5. We note that in the aforesaid decision, reliance was placed upon the decision of the Supreme Court in ***Chief Post Master General & others Vs. Living Media India Ltd***.[2] to reject an Application by the State for condonation of delay on the ground that no separate period of limitation is prescribed for the State. Therefore, in the absence of any justifiable reason, the delay should not be condoned as a matter of course only because the Applicant is a State. We find that in the ***Kayani Bakery*** (supra), the delay in filing the Appeal is 2088 days and

1 ***Notice of Motion 910 of 2016 in MVAT Appeal (L) No. 9 of 2016 and other connected matters***

2 ***2012 AIR SCW 1812***

the Court found that there was no sufficient explanation for the delay. Thus, did not condone the delay.

6. In the present facts, we find that because of the introduction of GST regime, the entire department has to be restructured. Thus, even though approval had been taken on 21st June 2017 to challenge the impugned order dated 17th March 2017 before this Court, the same could not be done by the Commissioner of Service Tax, as the reorganisation became effective from 1st July 2017. It is only thereafter that the Applicant started the process and filed the accompanying Appeal. In the above view, we are satisfied with the reasons indicated in the Motion for the delay in filing the Appeal. Thus, delay condoned.

7. Accordingly, Notice of Motion is allowed in terms of prayer clause (a).

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