

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 969 OF 2015
IN
CENTRAL EXCISE APPEAL (L) NO.48 OF 2009**

Nathmal Jagnani

..Applicant

In the matter between

M/s Shree Siddhi Processors

..Petitioner

Vs.

Union of India & Ors

..Respondents

**WITH
REVIEW PETITION (L) NO.73 OF 2011
IN
NOTICE OF MOTION NO.1192 OF 2011
IN
CENTRAL EXCISE APPEAL (L) NO.48 OF 2009**

M/s Shree Siddhi Processors

..Petitioner

Vs.

Union of India & Ors

..Respondents

Mr. Rajesh Talekar for the Applicant / Petitioner

Mr. Swapnil Bangur i/b Mr. V. a. Bajpayee for the Respondent Nos.2 & 3

**CORAM :R. M. SAVANT, &
REVATI MOHITE DERE,JJ
DATE : 12th JULY, 2018**

P.C.

1 The above Notice of Motion has been filed for seeking condonation of delay of 1306 days in filing the same for restoration of the above Review Petition which came to be dismissed for non prosecution on

account of the non removal of the office objections. The reasons for the delay can be found in the Affidavit in Support of the Notice of Motion especially in paragraphs 5, 6 and 7 thereof. The sum and substance of the reasons is that the Applicant / Petitioner was not made aware of the dismissal of the above Review Petition by the Advocate who was engaged by the Petitioner. After the Petitioner became aware a substantial period over 1000 days had already elapsed, by the time the Notice of Motion came to be filed there is a delay of 1306 days in filing the Notice of Motion.

2 In view of the fact that the said huge delay of 1306 days in filing the Notice of Motion for restoration of the Review Petition has been filed before considering whether a case for exercise of discretion has been made out by the Petitioner, we ventured to consider whether there was any merit in the Review Petition filed by the Petitioner. The review is sought by the Petitioner of the order dated 4-7-2011 passed by a Division Bench of this Court D. Y. Chandrachud J and Anoop V. Mohta J, as Their Lordships then were. By the said order the Division Bench dismissed the Central Excise Appeal (L) No.48 of 2009 on the ground that the CESTAT has recorded a pure finding of fact as regards the clandestine removal of fabrics without payment of duty. During the relevant period the Division Bench was of the view that on the basis of the said finding of fact the Tribunal was justified in sustaining the demand of duty and the penalty imposed on the Appellant. The Division Bench also alluded to

the recording made by the Tribunal in its order namely that in the reply to the show cause notice, the Appellant had conceded that the fabrics seized by the officers, who visited the factory, were in quantities which were in excess over what was accounted in the statutory records. Hence as indicated above, the Division Bench confirmed the finding of fact which was recorded by the CESTAT in respect of the clandestine removal of fabrics by the Appellant without payment of duty.

3 The Learned Counsel appearing on behalf of the Petitioner would contend that the said findings of fact arrived by the Tribunal is erroneous in view of the fact that the Petitioner has retracted and which retractions has been recorded in the proceedings.

4 In our view, since the Division Bench which had heard the said CESTAT Appeal had deemed it appropriate to confirm the finding of fact which was recorded by the CESTAT on the basis of the material which was before it. It is not possible for us in our review jurisdiction to take a view which is contrary to the view taken by the Division Bench whilst confirming the finding of fact recorded by the CESTAT. No case for review under any of the eventualities mentioned in Order 47 of the CPC is made out. We therefore do not find any merit in the Review Petition filed by the Petitioner. Hence we do not deem this is a fit case to exercise our discretion so as to condone the huge

delay of 1306 days in filing of the above Notice of Motion. The above Notice of Motion is accordingly rejected.

5 In view of the rejection of the above Notice of Motion, the Review Petition does not survive and to accordingly stand disposed of.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]