

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

**NOTICE OF MOTION NO. 119 OF 2018
IN
CENTRAL EXCISE APPEAL (L) NO. 54 OF 2013**

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

In the matter between :

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

v/s.

M/S. Wellknown Polyesters Ltd.. ... Respondent.

Ms. P. S. Cardozo, Advocate for the Applicant / Appellant.
Mr. Jas Sanghavi, Advocate I/by PDS Legal for the
Respondent.

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

DATED : SEPTEMBER 07, 2018.

P.C.

1 This Motion seeks condonation of 529 days delay in filing the present Notice of Motion that seeks to set aside the self-operating order dated 21.04.2016 passed by the Prothonotary and Senior Master, rejecting the applicant's appeal under Rule 986 of the Bombay High Court (O.S.) Rules,

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for failure to remove office objections within the stipulated time i.e. 19.05.2016.

2 We have perused the affidavit in support of the Motion, filed by Mr. S.K. Jha, Assistant Commissioner of Central GST dated 03.11.2017. Ms. Cardozo, learned counsel appearing for the appellant, placed reliance on the affidavit in support for condonation of delay.

3 On perusal of the affidavit in support, we find that it states that inadvertently the office objections remained to be removed after the order dated 21.04.2016 was passed by the Prothonotary and Senior Master. Thereafter, it states that there was change in the panel of advocates representing the appellant department and only when new panel counsel was briefed in the matter, the applicant realized that the matter had already been rejected on 21.04.2016. It gives no indication of the date, the panel of Advocates has changed. The affidavit further states that the appellant is a statutory government authority and it has very good chance to succeed in this appeal and, therefore, the order dated 21.04.2016 of the Prothonotary and Senior Master be set aside.

4 We find that the affidavit does not satisfactorily explains the delay. It does not indicate the exact date when the appellant department learnt about the rejection order

dated 21.04.2016 passed by the Prothonotary and Senior Master. The only reason set out therein is that there is a change in the panel of Advocates and the appellant is a statutory government authority, responsible for collection of the revenue under the relevant statute.

5 The reasons set out in the said affidavit for the delay are not satisfactory and rather, it reflects casual attitude on the part of the officers of the revenue. It appears that after filing of the appeal and /or engaging a panel Advocate, the officers of the Revenue proceed as if their responsibility is over. In fact, this Court in ***Commissioner of Income Tax Vs. Reliance Industries Ltd. (2017) 84 Taxmann.com 313*** under the Income Tax Act, 1961 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.”

The aforesaid observations apply equally apply to the present facts.

6 When attention was drawn of the counsel for the Revenue with regard to the aforesaid observations of this Court, she responded by contending that the government is impersonal entity and depend upon its officers to perform their job. Therefore, when the officer has not done his job properly, the State should not suffer on that count. This very submission was the subject matter of consideration before the Apex Court in the case of ***Office of the Chief Post Master General V. Living Media India Ltd. and Anr. (2012) 348***

ITR 7 (SC), (2012) 3 SCC 563, wherein the Apex Court has, *inter alia*, observed as follows (page 19 of 348 ITR) :-

“It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

7 We are of the view that the above observations equally apply to this case also. It may be pointed out that if the State is suffering on account of negligence of its officers then it must bring on record action having been taken against such delinquent officers. Nothing has been shown to us that the State has taken action against the officer concerned. In the above circumstances, we see no reason to condone the delay for the purpose of setting aside the order dated 21.04.2016 passed by the Prothonotary and Senior Master.

8 Accordingly, the Notice of Motion stands dismissed. No order as to costs.

(RIYAZ IQBAL CHAGLA,J.)

(M.S. SANKLECHA, J.)

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