Sharayu Khot.

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

NOTICE OF MOTION NO. 71 OF 2018

IN

CUSTOM APPEAL (L) NO. 52 OF 2017

The Commissioner of Customs (Import-II)	**...Applicant/ Appellant**
Versus	
Refco Industries	**...Respondent**

Mr. Pradeep S. Jetly, for the Applicant/Appellant.

Mr. Anil Balani, i/by Devraj Kansara, for the Respondent.

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

DATE : 30 August 2018

ORDER :

1. This Motion seeks condonation of 778 days delay in filing the Appeal from the impugned order dated 13th March

2015 passed by Customs, Excise and Service Tax Appellate Tribunal (for short "***the Tribunal***"). The Appeal has been filed on 5th December 2017. The last date for filing the Appeal is 20th October 2015. Therefore, the delay is of 778 days.

2. We have perused the Affidavit of Shri. Sukhpal Singh Dhani, Assistant Commissioner Customs, Group III dated 5th December 2017 in support of the Motion. The reasons set out in the Affidavit is that the Department was under mistaken belief that a Customs Appeal filed in this Court from an earlier order dated 20th March 2013 would also govern the impugned order dated 13th March 2015 passed by the Tribunal. It is on the above ground that condonation of 778 days delay in filing the Appeal is being sought.

3. The Respondents have filed the Affidavit in Reply of Shri. Dilip Mehta dated 27th August 2018, wherein it is specifically stated that by the letters dated 1st January 2016, 11th October 2016, 1st April 2016 and 7th August 2016 (copies

enclosed) the Respondent had approached the proper officer to implement the impugned order dated 13th March 2015. In fact, the Affidavit in terms of mentions names of the proper officers, whom the Respondent had met and requested for implementation of the impugned order dated 13th March 2015. Therefore, Shri. Balani, the learned Counsel for the Respondent submits that on these facts, the delay should not be condoned.

4. We find that the Affidavit in Support of the Motion is most casual. It does not mention even the date or the manner in which they realized their mistake and took steps to file an Appeal. Besides the Affidavit in support of the Motion does not indicate, who in the Department was under mistaken belief that the Appeal filed in respect of the earlier order of the Tribunal dated 20th March 2013 would govern also the impugned order dated 13th March 2015 of the Tribunal. The Affidavit ought to have been indicated the person who was under mistaken belief. The Department as an entity has no mind of it's own so as to be under mistaken belief as stated in the Affidavit.

5. Besides the Affidavit in Support makes no mention of the numerous letters addressed to the proper officer of Customs to implement the impugned order dated 13th March 2015 of the Tribunal. If the Officer of the Department were under the genuine belief that the Appeal from the earlier order dated 20th March 2013 of the Tribunal to this Court, would govern the issue, then it would have been so responded. We also note that this Appeal has been filed on 15th December 2017 that is much after the Appeal from the order dated 20th March 2013 was admitted on 12th June 2014 by this Court.

6. We find that the Affidavit in Support does not inspire any confidence. There is no fixing of responsibility for alleged misunderstanding on the part of the Customs Department. We know that the Appellant-Revenue regularly files Appeal from orders of the Tribunal to this Court and the statute under which they function, provides for the same. Thus, we find that there is gross negligence on part of the officers of the Customs in not filing an Appeal from the impugned order

dated 13th March 2015 within time and thereafter till 5th December 2017, when the Appeal was filed. Consequently, no occasion to condone the delay of 778 days in filing accompanying Appeal arises.

7. Accordingly, the Notice of Motion is dismissed.

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