IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12069 OF 2018

M/s. D.G. Infrastructure Pvt. Ltd. .. Petitioner

v/s.

The State of Maharashtra & Ors. .. Respondents

None for the petitioner
Mr. C.D. Mali, AGP for the respondent no.1 – State
Mr. Sham Walve I/b Nikhil Wadikar for the respondent no.4

CORAM : M.S. SANKLECHA &
M.S. SONAK, J.J.

DATED : 12th JUNE, 2019

P.C.

1. None appeared in support of the petition when it was called out in the pre-lunch session. It was kept back to 3.00 p.m. At 3.00 p.m. also none appeared in support of the petition.

2. This petition challenges the order dated 17th August, 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal). By the impugned order, the petitioner's appeal before it against the order of the Commissioner (Appeals) was dismissed. This on the ground that the petitioner's appeal was dismissed by the Commissioner (Appeals) on account of 377 days delay in filing the appeal before it.

The impugned order of the Tribunal dismissed the appeals on account of no sufficient explanation being made out for the delay.

3. We find that the appeal to the Commissioner (Appeals) was filed not only beyond the normal period of 60 days but also after the extended period of 30 days as provided under Section 35(1) of the Act. We note that the issue stands concluded against the petitioner by the decision of the Hon'ble Supreme Court in ***Singh Enterprises Vs. Commissioner of Central Excise (2008) 221 ELT 163.*** In the above case, it has been admitted that the Commissioner (Appeals) has power only to condone the delay only upto the period of 30 days after expiry of 60 days period which is normal period for preferring an appeal to the Commissioner (Appeals). In this case, the delay is much beyond the 90 days (inclusive of the period when the delay can be condoned).

4. In view of the above, the petition on merits does not deserve consideration. Accordingly, petition is dismissed.

(M.S. SONAK, J.) **(M.S. SANKLECHA, J.)**