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

NOTICE OF MOTION NO. 259 OF 2019
IN
CUSTOM APPEAL (L) NO. 5 OF 2019

The Commissioner of Customs (General) .. Applicant
In the matter between
The Commissioner of Customs (General) .. Appellant
v/s.
Nandan Shipping Agency .. Respondent

Mr. Pradeep S. Jetly for the applicant
None for the respondent

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

DATED : 6th JUNE, 2019

P.C.

1. This application seeks condonation of 484 days delay in filing an appeal from the order dated 18th April, 2017 passed by the Commissioner of Customs, Excise and Service Tax Appellate Tribunal (Tribunal).

2. On 11th April, 2019 when this motion first came up for hearing, this Court passed the following order :-

"*When we found that there is hardly any explanation for delay of 484 days in preferring appeal, the learned Counsel for the applicant seeks time to file additional affidavit. We grant time of two weeks from today to file additional affidavit. Place the Notice of Motion on*

25th April, 2019."

3. Pursuant to the above, the applicant has filed additional affidavit dated 24th April, 2019 of the Deputy Commissioner of Custom seeking to explain the delay in filing the accompanying appeal. The additional affidavit as filed, states that the order dated 18th April, 2017 was received on 22nd May, 2017. The above order dated 18th April, 2017 was put up to Principal Commissioner of Customs on 8th June 2017 whether the order of the Tribunal should be accepted or should it be challenged. On 13th June, 2017, the Principal Commissioner of Customs inquired about the liklihood of succeeding in appeal and the ground proposed for appeal. Thereafter, no further action was taken by the Revenue and the file was put up before the Principal Commissioner only on 5th September 2018 who directed the filing of appeal and seeking explanation for delay. The Panel Counsel was thereafter appointed on 30th November, 2018 when papers were handed over to him. The draft appeal was received by the Department on 4th February, 2019 and the appeal was thereafter filed on 18th February, 2019.

4. Mr. Jetly, learned Counsel appearing in support of the application

submits that on merits now the issue stands concluded in favour of the applicant by the decision of this Court in ***Principal Commissioner of Customs Vs. Unison Clearing Pvt. Ltd. 361 ELT 321*** (decided on 19th April, 2018). Reliance is also placed upon the decision of this Court in ***the Commissioner of Customs Vs. Fugro Survey (Middle East) Ltd.*** (NMA No. 743 of 2018 in Customs Appeal (L) No. 52 of 2018, dated 11th April, 2019)

5. We note that the impugned order of the Tribunal was received on 22nd May, 2017. We find that there is no attempt even made to explain the delay from 13th June, 2017 when the Principal Commissioner of Customs sought information of likelihood of success in appeal along with grounds of appeal till 5th September, 2018 when the file was again put up before the Principal Commissioner of Customs. This inaction shows negligence on the part of the Revenue in challenging the order dated 18th April, 2017 of the Tribunal in time. On being asked whether any responsibility has been fixed for the delay, we were informed that it is a separate issue.

6. We find the reliance placed by the Revenue upon the decision of this Court in Unison Clearing Pvt. Ltd. (supra) was a decision which

was rendered on 19th April, 2018 while the present appeal has been filed from an order dated 18th April, 2017. The non-taking of any action from 13th June, 2018 to 5th September, 2019 shows negligence. The application was moved to act only after the decision of this Court in Unison Clearing Pvt. Ltd. (supra). It appears that the appeal has been filed only in view of the decision of this Court in Unison Clearing Pvt. Ltd. (supra). This cannot be the basis for condoning such long delay.

7. Moreover, the decision of this Court in Furgo (supra) relied upon by Mr. Jetly, wherein a delay of 1096 days was condoned, turned on its own facts and in particular the contention of the applicant Revenue before the Court that the Revenue had not received a certified copy of the order from the Hon'ble Supreme Court dismissing its appeal and it was only when an officer of Custom, Vishakhapattanam sought details of the appeal before the Hon'ble Supreme Court in the case of Fugro Survey Ltd. (supra) that the applicant realized that the Apex Court had dismissed very appeal with liberty to move the High Court. The facts in the present case are completely different. It shows complete negligence on the part of the Officers of the Department to challenge the impugned order of the Tribunal dated 18th April, 2017. Thus, we find no sufficient cause has been made out for condonation of delay.

8. Accordingly, Notice of Motion is dismissed.

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