

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

NOTICE OF MOTION NO. 258 OF 2019

IN

CUSTOM APPEAL (L) NO. 6 OF 2019

The Commissioner of Customs (General)	.. Applicant
In the matter between	
The Commissioner of Customs (General)	.. Appellant
v/s.	
Srinivas Clearing and Shipping (I) Pvt. Ltd.	.. 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 582 days delay in filing an appeal from the order dated 11th January, 2017 passed by the Commissioner of Customs, Excise and Service Tax Appellate Tribunal (Tribunal).

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

“When we found that there is hardly any explanation for delay of 582 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 11th January, 2017 of the Tribunal set aside the suspension of the Custom Broker License of the respondent. The order was received on 17th January, 2017. The Deputy Commissioner sought directions from his superior on 9th May, 2017 whether the order of the Tribunal should be accepted or should it be challenged. It finally reached the office of the Principal Commissioner only on 10th October, 2017 leading to the Principal Commissioner to enquire why the same has been put up after 10 months from the receipt of the order of the Tribunal. On 19th January, 2018 the Revenue complied with the order of the Tribunal and restored the suspended Customs Broker license. Further, on 23rd January, 2018 the Chief Commissioner of Customs approved the proposal to look into the question of filing an appeal after investigating / presenting officers are appointed to deal with the cancellation of the Customs Broker license of the respondent. Therefore, the affidavit states that it was on 23rd July, 2018 that the applicant engaged a panel Counsel for the

purposes of filing an appeal. The draft was received from the panel Counsel 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 placed upon the following decisions in support of his submission that the delay in filing the appeal to be condoned.

- (i) Nagpur Business Forms Pvt. Ltd. Vs. CESTAT, 2016 (334) ELT 400 (Bom.)
- (ii) Proflex Systems Vs. Commissioner of Customs, 2017 (347) ELT 420 (Guj.)
- (iii) Commissioner of CGST & C. Ex. Vs. Sharma Fabricators and Erectors Pvt. Ltd. 2018 (16) GSTL 379 (All.)
- (iv) Commissioner of Central Tax & C. Ex. Vs. Brihanmumbai Municipal Corporation, 2018 (362) ELT 942 (Bom.)
- (v) Commissioner of Customs & C.Ex. Vs. Hongo India (P) Ltd. 2009 (236) ELT 417.
- (vi) Principal Commissioner Vs. Essar Oil Ltd. 2017 (347) ELT 432.
- (vii) 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. In particular, he placed emphasis upon the decision of this Court

in Fugro Survey Ltd. (supra) to support his contention that delay be condoned on payment of costs.

6. We note that the impugned order of the Tribunal had merely set aside the suspension of the Customs Broker License leaving the issue of cancellation of the Customs Broker License to be pursued by the Revenue independently. The Revenue ought to have filed an appeal from the impugned order which was received on 17th January, 2017 within the stipulated time. The explanation for the delay offered in the affidavit does not state the date when the approval for filing the appeal was granted by the Chief Commissioner. The filing of appeal from the order dated 11th January, 2017 of the Tribunal was not dependent upon appointment of Presiding Officer for the purposes of cancellation of license. This inaction shows negligence on the part of the Revenue in challenging the order dated 11th January, 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.

7. The various decisions relied upon by the Counsel for the applicant turned on its own facts. The applications for condonation of delay have to be considered in the light of the material placed by the

applicant explaining the delay in filing an appeal. Each case would be decided on the facts put forth by the applicant before the Court to explain the delay. Merely because a long delay has been condoned in one case would not by itself lead to the conclusion that long delays have been condoned in earlier cases and, therefore, notwithstanding the absence of appropriate explanation for the delay, the same has to be condoned. In fact, the reliance placed upon the decision of this Court in Unison Clearing Pvt. Ltd. (supra) by the applicant was a decision which was rendered on 19th April, 2018 while the present appeal has been filed from an order which was dismissed on 11th January, 2017. It is to be noted that it was after the aforesaid decision that 19th April, 2018 the applicant appointed an advocate on 23rd July, 2018 so as to prosecute an appeal from the impugned order of the Tribunal dated 11th January, 2017. 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.

8. 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 Revenue 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 11th January, 2017. Thus, we find no sufficient cause has been made out for condonation of delay.

9. Accordingly, Notice of Motion is dismissed.

(M.S. SONAK, J.)

(M.S. SANKLECHA, J.)