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

NOTICE OF MOTION NO. 499 OF 2019
IN
CENTRAL EXCISE APPEAL (L) NO. 260 OF 2016

The Commissioner of Service Tax,
Mumbai – II .. Applicant
In the matter between
The Commissioner of Service Tax,
Mumbai – II .. Appellant

v/s.
M/s. Vidyut Metallics Pvt. Ltd. .. Respondent

Ms. P.S. Cardozo I/b Mr. Vipul Bajpayee for the applicant
Mr. Jas Sanghvi I/b PDS Legal for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.

DATED : 31st JULY, 2019

P.C.

1. This motion has been taken out to condone the delay of 583 days in taking out this application to set aside the order dated 2nd February, 2017 passed by the Prothonotary and Senior Master under Rule 986 of the Bombay High Court (Original Side) Rules. The impugned self-operating order dated 2nd February, 2017 of the Prothonotary and Senior Master dismissed the applicant's appeal for non-removal of the office objections on or before 2nd March, 2017.

2. The affidavit dated 26th February, 2019 in support of the motion states that in view of the implementation of the Goods and Services Tax Act (GST) w.e.f. 1st July, 2017, the office objections could not be removed and thus, sought condonation of delay. The Revenue has filed an additional affidavit dated 23rd July, 2019, wherein it has been stated that due to roll out of GST, there was a massive reorganization which resulted in this appeal not being attended to and further that there was reorganization of the Commissionerates which led to the delay in filing this application. In particular 4 and 5 of the affidavit which is the case of the applicant reads as under :-

> *"4. I say that there is procedure for arriving at decision whether to file cases with Hon'ble High Court or otherwise. The file moves through various levels of officers sitting at various locations, hence there is procedural delay. I say that due to periodical transfer of officers at various intervals also affect the decision making as it takes considerable time to take charge of the officer transferred, and due to high court related matter officer need to take decision after seeing all relevant file and confirmation from Commissioner hence the decision of filing of motion also got delayed.*
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> *5. I say that the Appellant has a very strong case on merits. I further say that grave prejudice would be caused to the Applicant / Appellant if the delay in filing about Appeal is not condoned and the Appeal is not heard on merits. Whereas no prejudice of any nature whatsoever would be caused to the Respondents as their right to defend the Appeal remains intact. I say that the delay caused in filing Appeal is inadvertent and not deliberate."*

3. Thus, on a reading of the affidavit and additional affidavit in

support of the motion, the reasons for the delay are (I) implementation of GST w.e.f. 1st July, 2017; (ii) file gone through various offices leading to delay; and (iii) strong case on merits.

4. Ms. Cardozo, learned Counsel appearing in support of the application submits that the above is sufficient cause for condonation of delay and prays that the motion be allowed. In support, she relies upon the decision of the Supreme Court in the case of ***Collector, Land Acquisition Anantnag and Anr. Vs. Mst. Katiji and Ors.(1987) 28 ELT 185*** to contend that no litigant stands to gain by late filing of an appeal and prayed that the delay be condoned.

5. Mr. Sanghvi, on the other hand opposes the application and states that no explanation for the delay from 2nd March, 2017 to 30th June, 2017 is offered and thereafter also from 1st July, 2017 the GST being commenced, does not stop all activity of the Revenue for almost two years. Mr. Sanghvi invites our attention to the decision of the Apex Court in the case of ***Post Master General and Ors. Vs. Living Media India Ltd. and Anr. (2012) 3 SCC 563***.

6. On facts we find, there is no explanation offered for delay in the

affidavit for the period from 2nd March, 2017 to 30th June, 2017 when the GST was implemented. Thereafter also, there is no explanation offered as to when and how the Revenue realized that the office objection had remained to be removed in this appeal. The affidavits are casual.

7. Moreover, we find that the decision of the Apex Court in *Post Master General* (Supra) has considered its earlier decision in *Mst. Katiji & Ors.* (supra) relied upon by the Revenue before us and on consideration of the same has gone on to observe in paragraph 27, 28 and 29, as under :-

> *"27. 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 with 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.*
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> *28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligance or deliberate inaction or lack of bona fides, 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.*

> *29. 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 bona fide 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 the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."*

8. In this case also, we find that the explanation offered for the delay is movement of files amongst various officers. Moreover no particulars in case of this appeal are indicated. In any case, the Apex Court in Post Master General (supra) has held that this is not sufficient reason. It is clear from the affidavits that the applicants have been negligent. In these facts, we see no reason to condone the delay.

9. Accordingly, the Notice of Motion is dismissed.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**