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

CENTRAL EXCISE APPEAL No. 115 OF 2019

The Commissioner of Central Tax &
Central Excise, Mumbai Central
Commissionerate .. Appellant

v/s.

M/s. P.N. Writer and Co.Pvt. Ltd. .. Respondent

Mr. Ram Ochani a/w Sham Walve for the appellant
None for the respondent

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

DATED : 15th JULY, 2019

P.C.

1. This appeal under Section 35G of the Central Excise Act, 1944 (the Act) read with Section 83 of the Finance Act, 1994 (Finance Act), challenges the order dated 18th February, 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal). By the impugned order dated 18th February, 2019, the appellant's application for condonation of 67 days delay in filing the appeal from the date of the receipt of the order dated 23rd August, 2018 passed by the Committee of Chief Commissioners under Section 86(2) of the Finance Act was rejected. The order dated 23rd August, 2018 of the Committee

of Chief Commissioner directed filing of an appeal to the Tribunal from the order dated 26th March, 2018 of the Commissioner of Central Excise.

2. The Revenue has urged the following question of law for our consideration :-

> *(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in condoning the delay of 67 days in filing the appeal before it?*

3. The appellant had on 20th October, 2018 as directed by the order dated 23rd August, 2018 (received on 24th August, 2018) filed an appeal from the order dated 26th March, 2018 passed by the Commissioner of Central Excise. These was a delay in filing the appeal. Thus, an application for condonation of delay was filed by the appellant along with the appeal. This application as recorded in the impugned order reads as under :-

> "**Misc. Application for Condonation of Delay in filing the Appeal**
>
> May it please your Honour,

The applicant herein is the Commissioner of CGST & Central Excise Mumbai Central. The applicant most humbly submits as follows:

1. Appeal against Order-in-Original No.100/COMMR/(Dr.KNR)/CGST & CEX/MC/17-18 dated 26.03.2018 passed by the Commissioner, CGST & CEX, Mumbai Central showing the names and addresses of respondents as follows:

M/s. P.N. Writer & Co. Pvt. Ltd.
105, Dr. B. Ambedkar Road, Next to Voltasagar, Kalachowky, Mumbai – 400 033.

2. It is submitted that the delay of ______ days in filing this appeal is not on account of any negligence or inaction on the part of the department.

PRAYER

1. In view of the foregoing submissions, it is most humbly prayed that the Hon'ble Tribunal may be pleased to condone the delay and admit the appeal for the purpose of hearing on merits in the interest of justice and for act of kindness, the applicant shall ever pray."

4. Not satisfied with the application for condonation of delay, the Tribunal granted time to the appellant to file an affidavit in support of their application explaining the delay. In the affidavit as filed by the respondent, the delay of 67 days in filing the appeal was stated to be on account of re-organization and re-structuring of the Department in view of introduction of Goods and Service Tax Act (GST). The impugned order of the Tribunal while rejecting the application for condonation of delay records the fact that the GST was introduced w.e.f. 1st July, 2017 and in this case, the order of the Commissioner which is being challenged itself is dated 26th March, 2018 and the order of the

Committee of Chief Commissioners directing filing of the appeal from an order of the Commissioner dated 26th March, 2018 was passed on 24th August, 2018. In the above facts the Tribunal noted that the adjudication order being challenged as well as the order of the Chief Commissioner were all passed post implementation of GST. Thus, it found the explanation offered for the delay was not acceptable. In the above circumstance, the Tribunal held that no sufficient cause has been explained by the appellant warranting condonation of delay. It *inter alia* placed reliance upon the decision of the Apex Court in ***Chief Post Master General and Ors. Vs. Living Media India Ltd. & Anr. 277 ELT 289***.

5. Being aggrieved, the Revenue is in appeal before us.

6. Mr. Ochani, the learned Counsel appearing for the appellant-Revenue submits that the impugned order of the Tribunal has adopted a very technical view in rejecting the application for condonation of delay. It ought to have condoned the delay of 67 days in filing the appeal and considered the issue on merits. It is submitted that the impugned order of the Tribunal is in defiance of the Apex Court's decision in ***Collector, Land Acquisition Anantnag & Anr. Vs. MST.***

Katiji and Ors. 1987 (28) E.L.T. 185 which directs a liberal approach in matters of condonation of delay. In the above view, it prayed that the impugned order be set aside and the matter be restored to the Tribunal for considering the appeal on merits after this Court condones the delay in filing the appeal before the Tribunal.

7. We note that the statute provides a specific time period for filing an appeal. The parties governed by the Act and Finance Act are required to adhere to the time line for filing an appeal to the Tribunal under the Acts. However, the Act itself empowers the Tribunal to condone delay in filing an appeal, if sufficient cause is shown for the same. The words 'sufficient cause' would mean the cause/ reason for the delay is bona fide and does not suffer from negligence. In this case, as noted by the Tribunal in the impugned order, no sufficient cause has been shown by the Commissioner. In fact, the application as originally filed for condonation of delay merely stated that there is a ___ (Blank) days of delay in filing the appeal and that this delay is not on account of negligence on the part of the Department. This shows the casual manner in which the Revenue had first filed its application for condonation of delay. Even when time was given to the Revenue to file an affidavit to explain the delay, the affidavit as filed states that the

delay was on account of re-structuring of the Department due to the introduction of the GST. This, the Tribunal correctly noticed had happened on 1st July, 2017 while the order from which the delay in filing the delay is to be considered is dated 23rd August, 2018 (Received by the Commissioner on 24th August, 2018). It was over a year after introduction of GST and yet the Revenue claims to be hampered in discharging its duties under the Act and Finance Act. Thus, in these facts, in the absence of any acceptable / believable reason for not filing an appeal, no fault can be found with the impugned order of the Tribunal, in holding that the reason given for the delay as sufficient cause, namely, the introduction of GST is on the face of it is unacceptable as the orders in question were all passed much after the introduction of GST. The occasion to adopt a liberal approach in matters of condondonation of delay would only arise if some cause is made out for the delay. Therefore, the view taken by the Tribunal in the present facts cannot be said to be perverse.

8. Thus, the proposed question of law does not give rise to any substantial question of law. Thus, not entertained.

9. Accordingly, the appeal is dismissed. No order as to costs.

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