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

NOTICE OF MOTION NO.518 OF 2018
IN
CENTRAL EXCISE APPEAL NO.15 OF 2011

The Commissioner of CGST & Central Excise, Raigad Commissionerate ... Applicant

In the matter between :

The Commissioner of Central Excise Raigad Commissionerate, Central Excise ... Appellant
versus
M/S Dharamsi Morarji Chemical Co. Ltd. ... Respondent

Mr.Jitendra B.Mishra for the applicant/ appellant.

Mr.Prakash Shah a/w Mr.Jas Sanghavi i/b PDS Legal for the Respondent.

CORAM :- S. C. DHARMADHIKARI & G.S.PATEL, JJ.
DATE :- OCTOBER 22, 2019

P.C. :-

1. This is an application for condonation of 800 days' delay in filing of an Notice of Motion for restoration of the Central Excise Appeal.

2. In fact, the main prayer is prayer clause (b). This is, thus, in sum and substance, a review application. It is time barred. The delay is stated to be of 800 days.

3. Having heard Mr.Mishra appearing in support of this Notice of Motion for condonation of delay and perusing, with his

assistance, the affidavit in support of the same, affirmed by Mr.Ayush Katheria, Assistant Commissioner CGST & CX, Div-III, Raigad Commissionerate, we find no sufficient cause for condoning this enormous delay.

4. The only ground on which the delay is sought to be condoned is that since the matter was pending before this Court, the other show cause notices were transferred to call book, pending outcome of the Central Excise Appeal No.15 of 2001 (the subject appeal). It is stated that inadvertently and without considering the monetary impact and the implications on the pending show cause notices, the Department withdrew this Appeal on 15th February, 2016.

5. From that date, nothing has been done by the concerned Department. It is false to suggest that immediate steps were taken to apply for restoration of this Appeal by recalling the earlier order. Far from taking any effective and prompt steps, the matter was left unattended by the Department. It is no point blaming panel advocates for advocates alone are not concerned with Tax Revenue cases involving huge financial and revenue implications. It is the duty of the officers in the Department to attend the matter and in the event any instructions have to be given to Advocates, they should do so expeditiously. We do not

think that the reasons assigned in paras 12 and 13 of this affidavit in support constitute sufficient cause for condoning the delay.

6. In a judgment reported in the matter of *Office of the Chief Post Master General and Ors. Vs. Living Media India Ltd. and Anr.*[1], the Hon'ble Supreme Court has categorically held that law of limitation applies to all, including the Government. The Government is not exempted from its application. The Government is not a special litigant. If the Union of India and its Officers, despite stern warning of the Hon'ble Supreme Court given from time to time, have not improved the state of affairs at their end, then, they can hardly blame the judicial set up. That files have to go from Department to Department for remarks of each officer in the hierarchy to be entered, as held by the Hon'ble Supreme Court, by itself is not a sufficient cause.

7. In the above circumstances, we do not think that the affidavit in support has any explanation, much less reasonable and satisfactory, for condoning the delay of 800 days.

8. The Notice of Motion is, therefore, dismissed.

(G.S.PATEL, J.) **(S.C.DHARMADHIKARI, J.)**

1 **AIR 2012 Supreme Court 1506**