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

NOTICE OF MOTION NO. 318 OF 2019
IN
NOTICE OF MOTION NO. 442 OF 2017
IN
CENTRAL EXCISE APPEAL (L) NO. 118 OF 2012

The Commissioner of Central Excise
Mumbai – V Commissionerate .. Applicant

In the matter of
The Commissioner of Central Excise
Mumbai – V Commissionerate .. Appellant

v/s.
M/s. Western India Metal Industries & Ors. .. Respondents

Mr. Swapnil Bangur a/w Mr. Vipul Bajpayee for the applicant / appellant
Mr. Chirag Shetty I/b Naresh Thacker for the respondents

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

**DATED : 31st JULY, 2019**

**P.C.**

1. This application has been filed for condoning a delay of 887 days in filing this motion seeking to extend the time for removal of office objections granted by this Court in its order dated 23rd June, 2017.

2. Mr. Bangur, learned Counsel appearing in support of the

application states that the applicant had not removed the office objections in its appeal. This resulted in an self-operating order dated 1st March, 2016 under Rule 986 of the Bombay High Court (Original Side) Rules which resulted in the appeal being dismissed on 15th March, 2016. This led to the applicants taking out Notice of Motion No.442 of 2017 in the present appeal for setting aside the above self-operating order dated 1st March, 2016. By order dated 23rd June, 2017, this Court allowed the applicant's appeal on the condition that the office objections are removed within four weeks from 23rd June, 2017.

3. However, as the applicants failed to remove the office objections as directed by this Court, this motion is filed seeking extension of four weeks time from today to enable the applicants to remove the office objections raised by the Registry. The affidavit dated 18th September, 2018 in support of the motion as filed only stated that the objections could not be removed in view of implementation of Goods and Services Act, 2017 (GST). However, as the same did not indicate how and when the non-compliance of the order dated 23rd June, 2017 was noticed, the Revenue took time to file additional affidavit.

4. Consequent to the above, the Revenue filed the additional

affidavit dated __ June, 2019 of Mr. Akshay Patil, Assistant Commissioner of CGST & CE, Div. IX, Mumbai West Commissionerate. In the affidavit, the explanation offered in the earlier affidavit is reiterated i.e. the order of the Court dated 23rd June, 2017 could not be complied with as Officers of the Department were busy with the implementation of the Goods and Services Tax w.e.f. 1st July, 2017 and besides this also lead to restructuring of the erstwhile Commissionerates. It states that it realized that the order dated 23rd June, 2017 could not be complied with on physical verification of its papers. It is in these circumstances that the applicant prays that the delay of 887 days be condoned in filing this application.

5. We note that in the present facts, the applicant had failed to remove the office objections and as directed by the Prothonotary and Senior Master on 1st March, 2016. This Court granted their application by restoring the appeal subject to the applicants removing the office objections within 4 weeks. However, the applicant failed to act upon the same and the affidavit as originally filed did not indicate how and when the applicants realized that the order of this Court was not complied with, time was taken to file an additional affidavit. However, the additional affidavit as filed also does not indicate as to when the

applicant came to know that they had not complied with the order dated 23rd June, 2017 of this Court. Thus, the date when they came to know of non-compliance of the order is critical in any application for condonation of delay, as if the above is accepted the time taken thereafter needs to be explained. The affidavit and additional affidavit are both silent on this aspect.

6. In these circumstances, the application for condonation of delay in taking out the motion is rejected. Hence, no occasion to consider the extension of time to remove the office objections as directed by this Court arises.

7. Accordingly, Notice of Motion is dismissed.

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