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

NOTICE OF MOTION NO. 30 OF 2019
IN
CENTRAL EXCISE APPEAL NO. 168 OF 2013

Sunil Shrinivas Bhattad ..Applicant
In the matter of
Sunil Shrinivas Bhattad .. Appellant
v/s.
The Commissioner of Central Excise
Kolhapur .. Respondent

ALONG WITH
NOTICE OF MOTION NO. 31 OF 2019
IN
CENTRAL EXCISE APPEAL NO. 188 OF 2013

Shree Venkateshwara Pan Masala
Ind. Pvt. Ltd. ..Applicant
In the matter of
Shree Venkateshwara Pan Masala
Ind. Pvt. Ltd. .. Appellant
v/s.
The Commissioner of Central Excise
Kolhapur .. Respondent

ALONG WITH
NOTICE OF MOTION NO. 32 OF 2019
IN
CENTRAL EXCISE APPEAL NO. 166 OF 2013

Pravin Shrinivas Bhattad ..Applicant
In the matter of
Pravin Shrinivas Bhattad .. Appellant
v/s.
The Commissioner of Central Excise
Kolhapur .. Respondent

ALONG WITH
NOTICE OF MOTION NO. 33 OF 2019
IN
CENTRAL EXCISE APPEAL NO. 230 OF 2013

Rajendra Babulal Malu ..Applicant
In the matter of
Rajendra Babulal Malu .. Appellant
v/s.
The Commissioner of Central Excise
Kolhapur .. Respondent

Mr. Karl Tamboly a/w Mr. Deep Morabia, Mr. Zaid Ansari and Mr. Mangesh Kokare for the applicant / appellants
Mr. Pradeep Jetly a/w Mr. J.B. Mishra for the respondent

CORAM : A.S. OKA &
M.S. SANKLECHA, J.J.

DATED : 9th APRIL, 2019

P.C.

1. Heard the learned Counsel appearing for the applicant and the learned Counsel appearing for the respondents. The applicants are the appellants in Central Excise Appeals.

2. By judgment and order dated 21st July, 2014, the appellants' appeals were dismissed by this Court. The appeals preferred before this Court by the applicants under Section 35G of the Central Excise Act were directed against the common interim order dated 26th April, 2013 passed by the Customs Excise and Service Tax Appellate Tribunal (for

short "the Tribunal). By the said common interim order dated 26th April, 2013, certain amounts were directed to be deposited by the applicants within the period of eight weeks as a condition precedent for entertaining the appeals by the Tribunal. While dismissing the appeals by the judgment and order dated 21st July, 2014 of this Court, time to deposit the amounts as per the common impugned order of the Tribunal was extended by a period of four weeks. The judgment and order dated 21st July, 2014 was challenged by the applicants by filing Special Leave Petitions. By order dated 24th November, 2014, the Special Leave Petitions were dismissed. It appears that a review petition was filed before the Apex Court which was dismissed by the order dated 4th February, 2016. Thereafter, a curative petition was filed before the Apex Court. The Apex Court dismissed the same by the order dated 18th February, 2016. According to the case made out in the affidavit-in-support, the order of this Court dated 21st July, 2014 became operative only on dismissal of curative petition on 18th February, 2016.

3. The prayers made in these Notices of Motion are identical. The prayers are essentially for extending the time granted by this Court under the order dated 21st July, 2014 to comply with the conditions in

common interim order of the Tribunal by depositing the requisite amounts. As there is a delay in seeking such relief, there is a prayer for condonation of delay of 1535 days.

4. The Notices of Motion are strongly opposed by the learned Counsel for the respondent by contending that the judgment and order of this Court dated 21st July, 2014 was always operative and, therefore, the contention that the order did not operate till 18th February, 2018 is completely erroneous. His submission is that this Court showed leniency by extending time to make compliance and after a long lapse of time, now there is no reason to extend the time.

5. The applicants have tendered undertakings on oath which are taken on record in each Notices of Motion and marked “U-1” for identification. The applicants have deposited the amounts as per order dated 26th April, 2013 as confirmed by this Court by order dated 21st July, 2014. The applicants have given a clear undertaking (in paragraph 4 of the aforesaid undertakings) to pay the amount as directed to be paid within a period of four weeks along with interest thereon at the rate of 9% from 19th August, 2014 till 11th July, 2017 being the last date of payment having been deposited by them. The

contention of the applicants is that they have deposited the entire amount due and payable as per the order dated 21st July, 2014 by various installments. The fact that the amounts are belatedly paid is not disputed by the respondent. To ensure that the Revenue is adequately compensated, the applicants have agreed to pay interest at the rate of 9% per annum on the amounts which are due and payable under the common interim order from 19th August, 2014 (the date on which time fixed under the order of this Court expired till the date of payment of the entire amount). The learned Counsel appearing for the applicants states that the first sentence in paragraph no.5 of the undertaking has been inadvertently incorporated and the same may be treated as deleted. He states that the interest at the rate of 9% p.a. will be actually paid and there is no question of furnishing bank guarantee for the said amount.

6. Considering the fact that the compliance with the undertaking will compensate the Revenue to a substantial extent for the delay, the notices of motion deserve to be made absolute.

7. Accordingly, we pass the following order:-

ORDER

(a) We accept the undertaking of the applicants incorporated in paragraph 4 of the undertaking which is taken on record and marked "U-1";

(b) In view of the undertaking, the Notices of Motion are made absolute by condoning the delay and by extending the time granted under order the dated 21st July, 2014 till the respective dates, on which the entire amount due and payable as per the common interim order, was deposited by the applicants;

(c) In the event of failure of the applicants to abide by the undertaking, apart from the legal consequences which will follow, the Notices of Motion shall stand dismissed without further reference to the Court;

(d) The Notices of Motion are disposed of in the above terms;

(e) For a period of 12 weeks from today, no coercive action shall be taken by the Department to enable the applicants to comply with their undertakings;

(f) We make it clear that the amount of interest is agreed to be paid by the applicants with a view to compensate the Revenue on account of delay. In fact, the amount of interest is agreed to be paid by way of costs. Therefore, it follows that the payment of interest will have no bearing on the main controversy on merits.

(M.S. SANKLECHA, J.) **(A. S. OKA, J.)**