

IN THE HIGH COURT OF BOMBAY AT GOA**MISC. CIVIL APPLICATION NO.92 OF 2020****IN****STAMP NUMBER MAIN NO.2785 OF 2019****(CUSTOM APPEAL)**

JOHN MIRANDA,
BANDRA MUMBAI - 400 050.

... APPLICANT

Versus

THE COMMISSIONER OF
CUSTOMS & CENTRAL
EXCISE, PATTO, PANAJI, GOA.

.... RESPONDENT

Mr. C.A. Ferreira with Mr. Rajiva Srivastava, Advocates for the Applicant.

Ms. Asha Desai, Senior Standing Counsel with Mr. Saichandra Talamraja, Advocate for the Respondent.

**CORAM: REVATI MOHITE DERE &
M. S. JAWALKAR, JJ.**

DATE : 29th November, 2021

ORAL ORDER : (*Per M.S. Jawalkar, J.*)

Present application is filed for condonation of delay in filing appeal under Section 130(2A) of the Customs Act, 1962.

2. Applicant submits that an appeal was filed by the applicant before the CESTAT, West Zone, Mumbai against the original order of the Commissioner of Customs dated 03.06.2005. He submits that the said appeal came to be

dismissed on 16.11.2016. According to the applicant, the Department had also filed an appeal, however, the applicant was not served with any notice of the same. The said appeal also came to be dismissed.

3. As there were apparent errors, rectification applications were filed in both the appeals. As per legal advice, the petitioner also filed a Writ Petition before the Bombay High Court on 05.10.2018 bearing no.3112 of 2018. The said Writ Petition came to be disposed of vide order dated 06.06.2019 allowing the petitioner to withdraw the Writ Petition with liberty to take appropriate proceedings. It is stated that some period was consumed in seeking clarifications from the advocate. Sometime was also consumed in obtaining certified copies.

4. According to the applicant, if the said period is excluded, i.e. the time taken in pursuing the remedies before the High Court and 180 days available to file appeal, the delay would be of 420 days. It is submitted that if the delay is calculated after rejection of the application for rectification by excluding the time spent in the High Court and appeal period, the delay would be of 127 days in filing the present custom

appeal. Thus, it is submitted that the delay occasioned in filing the appeal is neither deliberate nor intentional, but for bonafide reasons as stated aforesaid and hence, the delay be condoned.

5. Respondent vehemently opposes the application on the ground that there is no justifiable cause for condoning the delay.

6. We have heard both the parties at length. We are satisfied that the delay needs to be condoned for the reasons stated in the application, as the applicant was pursuing a remedy before this Court in Writ Petition under a bonafide belief that his petition was maintainable. In the peculiar facts, we deem it appropriate to condone the delay caused in filing the aforesaid appeal, subject to payment of costs.

7. Accordingly we proceed to pass the following order :

O R D E R

- (i) Application is allowed.
- (ii) Delay in filing Custom Appeal under Stamp Number Main No.2785 of 2019 is condoned subject to cost of ₹15,000/- to be paid within two weeks from today to Apna Ghar, Mercedes, Panaji.
- (iii) Registry is directed to register the appeal after due compliance as above.

(iv) Accordingly, the application stands disposed of.

8. All parties to act on the authenticated copy of this order.

M. S. JAWALKAR, J.

REVATI MOHITE DERE, J.

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