IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.8747 OF 2023
IN
REVIEW APPLICATION (STAMP) NO.16566 OF 2023
IN
WRIT PETITION NO.1346 OF 2016

M/S VATAN TEXTILE LIMITED

THROUGH ITS DIRECTOR RAFEEQ AHMED KHAN

VERSUS

UNION OF INDIA AND OTHERS

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Mr. R.F. Totala, Advocate for applicant

Mr. D.S. Ladda, Advocate for respondent Nos.1 to 3

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CORAM : SMT. VIBHA KANKANWADI
ABHAY S. WAGHWASE, JJ.

RESERVED ON : 17th JULY, 2023

PRONOUNCED ON : 11th AUGUST, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for getting delay of 1626 days condoned in filing review application.

2 Applicant is the original petitioner, who had filed Writ Petition

No.1346 of 2016 challenging the order dated 30.03.2015 passed by Customs, Central Excise and Service Tax Appellate Tribunal, West Zonal Bench, whereby condition of pre-depositing 25% of demand was imposed on the petitioner. After hearing both the parties, this Court had dismissed the writ petition on 24.11.2018. The said order was challenged before Hon'ble Supreme Court by preferring two Special Leave Petitions i.e. S.L.P. (D) No.8999 of 2019 and S.L.P. (D) No.9000 of 2019. By order dated 22.04.2019 the Hon'ble Apex Court allowed both the SLPs and remanded the Writ Petition No.1346 of 2016 back to this Court with specific order to the petitioner to invite attention of this Court to the relevant provisions and seek appropriate directions. This Court was directed to decide the said application/petition on merits in accordance with law. Thereafter the applicant filed Civil Application No.3658 of 2023 for amendment in view of the said order passed by the Hon'ble Supreme Court. After hearing both parties in the said civil application, this Court had permitted to withdraw the application for amendment with liberty to file comprehensive review application. That order was passed on 18.04.2023 and this has caused delay in filing the review petition and, therefore, on these grounds the delay has been sought to be condoned.

3 Affidavit-in-reply on behalf of the respondents has been filed by

Arvind Gajanan Dhobley, Assistant Commissioner of Central GST and Central Excise, Aurangabad Urban Division. It has been stated that the grounds for the delay are not reasonable, much less appropriate, no relevant documents have been placed. A paragraph has been mentioned in respect of merits of the review petition and the calculations have also been given in respect of the merits of the pre-condition for deposit.

4 At the outset, we would like to say that we are not going into the merits of the review application right now, we are dealing with the delay condonation application first and thereafter by giving both the parties a reasonable opportunity the review petition would be considered.

5 Heard both sides and in order to cut short it can be said that both the learned Advocates have made submissions in support of their respective contentions.

6 The order was passed by Hon'ble Supreme Court on 22.04.2019. Though there appears that the petitioner had approached Hon'ble Supreme Court after the period of limitation; yet, in both the petitions the delay was condoned by Hon'ble Supreme Court and, therefore, we can say that the delay till the date of pronouncement of order by the Hon'ble Supreme Court there is no question of considering it as delay. There was no delay at all.

After the said order was passed, it appears that the petitioner approached this Court by filing Civil Application No.3658 of 2023. For this delay it is said that it was also hit by the COVID-19 period. Though we may not strictly consider the said fact; yet, from 23.04.2019 onwards till the lock-down was declared the petitioner had ample opportunity to file review application. The order passed in Writ Petition No.1346 of 2016 was not specifically set aside, but the petitioner was directed to approach this Court and invite the attention of this Court to the relevant provisions and seek appropriate directions and, therefore, that promptness was required on the part of the petitioner. No doubt, when same order is passed in favour of the petitioner and this Court has been directed to look into the matter, which as per the Hon'ble Supreme Court was not considered by this Court, then a good ground has been made for condonation of delay. Yet, the inconvenience caused deserves to be compensated in terms of money as the huge exchequer could not have been recovered from the petitioner. Hence, following order.

ORDER

1 Application stands allowed.

2 The delay stands condoned in filing review application upon the deposit of costs of Rs.10,000/- (Rupees Ten Thousand only), to be deposited

in this Court, within a period of three weeks.

3 After the deposit of the said amount, office to verify the review application and register.

4 Thereafter the petitioner is at liberty to take the circulation.

(ABHAY S. WAGHWASE, J.) **(SMT. VIBHA KANKANWADI, J.)**

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