IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1429 OF 2019

Union of India
Through Divisional Railway Manager,
Central Railway, Bhusawal Division,
Bhusawal (M.S) … Petitioner

versus

The Commissioner of Central Excise
& Customs, Nashik … Respondent

……....

Mr. Dheer Sampat i/b. Mr. T.J.Pandian for the Petitioner.
Mr. Karan Adik with Ms. Maya Majumdar for the Respondent.

…...…

CORAM : NITIN JAMDAR AND ABHAY AHUJA, JJ.

DATE : 9 JANUARY 2023

P.C.:-

Heard the learned Counsel for the parties.

2. The Petitioner-Union of India, Divisional Railway Manager, Central Railway, has filed this petition challenging the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai, dated 15 May 2018, rejecting the Application for condoning the delay in filing an appeal no. S.T./ 85862/18.

3. The Additional Commissioner had imposed service tax liability of Rs.25,79,320/- upon the Petitioner along with interest and a penalty of Rs. 4,30,000/-under section 77 of the Finance Act, 1994 and a penalty of Rs. 25,79,320/- under section 78 of the Act of 1994. The demand of service tax arose as the Petitioner-Central Railway had provided space to various agencies for advertisement in the premises owned by it and provided time slot for advertising at different railway stations in their public announcement system. The Commissioner held that this activity is a taxable service under the category of sale of space or time for advertisement under section 65 (105) (zzzm) of the Act of 1994. The appeal filed by the Petitioner in the Commissioner (Appeals) was dismissed on 28 January 2013. The Petitioner then challenged the order passed by the Commissioner (Appeals) by way of an appeal under section 35B of the Central Excise Act, 1994 in the Appellate Tribunal.

4. There is a delay of four years, nine months and twenty days in filing the appeal in the Tribunal, and the Petitioner sought condonation thereof. On the aspect of delay, the Tribunal referred to the decision of the Hon'ble Supreme Court in the case of *Collector, Land Acquisition Anantnag and Another v. MST. Katiji and Others*[1] and held that the case was not made out for condonation of delay and accordingly rejected the application for condonation of delay by the impugned order dated 15 May 2018.

1 1987 (28) ELT 185 (S.C.)

Hence, the Petitioner is before us.

5. We have heard Mr. Dheer Sampat, the learned Counsel for the Petitioner and Mr.Karan Adik, the learned Counsel for the Respondent.

6. When the petition came up on board on 13 December 2022, the following order was passed :

> *" Heard the learned counsel for the parties.*
>
> *2. The Petitioner before us is the Central Railways. The Petitioner has challenged the order passed by the Customs, Excise and Service Tax Appellate Tribunal dated 15 May 2018 refusing to condone delay in filing appeal by the Petitioner- Railways.*
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> *3. The learned counsel for the Respondent seeks time to file reply. If no reply is filed within two weeks, it will be presumed that the Respondent does not have objection to the prayer for condonation of delay and the Court will proceed to pass appropriate order in that regard. Stand over to 9 January 2023".*

No reply affidavit is filed and we proceed as per the order dated 13 December 2022.

7. We have gone through the reasons given by the Petitioner for condonation of delay. The Petitioner stated that discussions & deliberation were made in the Cabinet on the representations of the

Railways for exemption from service tax liability and as result of the same, an amendment has been introduced in the Act of 1994 by incorporating section 99 in the Finance Bill-2013. This information was circulated to all the Zonal General Managers of the Indian Railway by the Ministry of Railway through Railway Board by Circular dated 5 March 2013. The Petitioner has stated that thereafter, the Respondents also did not pursue the demand raised by them under the show cause notice presuming that exemption is granted to the Railways for the period in question. When the Petitioner received the demand, the Petitioner informed to the Assistant Commissioner about the amendment and requested to waive the demand with retrospective effect as there was no dues in view of the amendment. It is stated that the Superintendent, CGST & CX Bhusawal Range informed the Petitioner that since the order-in-original dated 13 March 2012 was upheld in the appeal preferred by the Petitioner on 28 January 2013, the Petitioner had no option except to get the same set aside by Higher Forum. The Petitioner has thus stated that the delay is not deliberate but in view of the fact that since the Railways bona fide believed that the liability of service tax for the period from 2006 to 2009 which is the subject matter of demand stood wiped off.

8. We find that in the impugned order, the Tribunal except referring to the ratio laid down by the Hon'ble Supreme Court in the case of *Collector, Land Acquisition Anantnag and Another*

(supra) has not discussed as to the facts of the Petitioner's case as to why the reasons for the delay are not acceptable. Bare perusal of the reasons given by the Petitioner referred to above does not show that no indulgence whatsoever was warranted. The explanation given by the Petitioner was a reasonable explanation.

9. Further, either allowing the application for condonation of delay or rejecting the same were not the only options available with the Tribunal. Equities could have been balanced by imposing suitable conditions, which option has not been considered by the Tribunal at all.

10. In light of the above discussion, we are of the opinion that equities in the case can be balanced by granting application for condonation of delay, subject to the Petitioner depositing 25% of the principal amount.

11. The writ petition is allowed in terms of prayer clause (a), subject to the Petitioner depositing 25% of the principal amount in the Tribunal within six weeks from the date order is uploaded. The writ petition is disposed of accordingly.

(ABHAY AHUJA, J.) **(NITIN JAMDAR, J.)**