

Vidya Amin

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

CENTRAL EXCISE APPEAL NO. 6 OF 2021

Zodiac Clothing Company Ltd.

... Appellant

Versus

The Commissioner of Service tax, Mumbai - I

... Respondent

Ms. Rita K. Joshi with Mr. R. V. Shetty & Mr. Sharad R. Shetty, for the Appellant.

Mr. Swapnil Bangur with Mr. Dhananjay B. Deshmukh, for the Respondent.

CORAM: G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATED: 22 June, 2023

P.C.

1. The question of law is reframed as under:
“Whether the Tribunal is justified in not exercising its discretion to condone the delay of 169 days?”
2. We have heard learned counsel for the appellant and learned counsel for the respondent.
3. The appellant has explained the delay by stating that due to resignation of one of their employees, they were not aware about the Order- in-appeal and it came to their notice only after the drawer of the resigned employee was checked.
4. The appellant is a body corporate, the affairs of which are conducted by its employees. In the present case, it was a categorical case of the appellant that

the concerned employee, in-charge of the proceedings had resigned. Such situation of the employees handling the affairs of the legal entity are required to be considered in a broader manner and not with mathematical precision, when it comes to an issue of condoning delay, when the litigant is availing of a statutory remedy of an appeal. It is well settled that technicalities would not defeat the remedy, unless the reasons set out by the litigant who prays for condonation of delay are absolutely bereft of sufficient cause, untenable or by any reasonable standard unacceptable. Certainly the present case is not such.

5. In our considered opinion, in the facts of the present case, the delay was sufficiently explained. The Tribunal has erred in taking a hypertechnical view of the matter. The impugned order passed by the Tribunal hence would be required to be quashed and set aside by condoning the delay in filing of the appeal. Ordered accordingly.

6. The appeal stands restored to the file of the Tribunal to be adjudicated on merits.

7. The above order, however, shall be subject to a cost of Rs.10,000/- to be paid by the appellant to the respondent within two weeks from today.

8. Disposed of. No costs.

(JITENDRA JAIN, J.)

(G. S. KULKARNI, J.)