

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

NOTICE OF MOTION NO.3028 OF 2016
IN
CENTRAL EXCISE APPEAL {L} NO.109 OF 2014

The Commissioner of Central Excise
Pune-III Commissionerate, Pune
Now
The Commissioner of Service Tax, Pune Applicant
In the matter between
The Commissioner of Central Excise
Pune-III Commissionerate, Pune
Now
The Commissioner of Service Tax, Pune Appellant
Vs.
M/s. Vansum Industries Respondent

AND

NOTICE OF MOTION NO.3034 OF 2016
IN
CENTRAL EXCISE APPEAL {L} NO.110 OF 2014

The Commissioner of Central Excise
Pune-III Commissionerate, Pune
Now
The Commissioner of Service Tax, Pune Applicant
In the matter between
The Commissioner of Central Excise
Pune-III Commissionerate, Pune
Now
The Commissioner of Service Tax, Pune Appellant
Vs.
M/s. EON Hinjewadi Infrastructure (P)
Ltd. Respondent

Mr. Swapnil Bangur with Mr. Sham V. Walve for the Applicant/Appellant in both matters.

Mr. Jitendra Motwani with Mr. Chirag Shetty i/by M/s. Economic Laws Practice for the Respondent in NMA-3028/2016.

Mr. Prakash Shah with Mr. Jas Sanghavi i/by M/s. PDS Legal for the Respondent in NMA-3034/2016.

**CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

DATE : FEBRUARY 13, 2017

P.C:

1. We have before us a further affidavit and filed by none other than the Commissioner of Service Tax.

2. It makes an interesting reading. The affidavit does not offer any explanation as to why in an Appeal filed on 22-1-2014 to challenge an order dated 18-4-2013, no steps were taken to comply with the procedural rules. Caution or warning in the form of a conditional order dated 18-9-2014 was issued. Meaning thereby, if the appellants do not come forward to comply with the procedural rules, by virtue of The Bombay High Court (Original Side) Rules, 1980 (particularly Rule 986),

Appeals can be dismissed for want of procedural compliance.

The Registry then need not place these matters before the Court, but has been empowered to dismiss them by taking recourse to this Rule. This dismissal took effect on 26-10-2015. That was by a further conditional order dated 12-10-2015 of the Registry.

3. The Revenue proceeded on the footing as if there is only one procedural formality or objection which needs to be complied or removed, that is, that the Appeals as filed were barred by limitation and no steps were taken to have that delay condoned. If that steps were not taken, that itself was enough to treat the Appeals as dismissed. If the Appeals were barred by time, then, they could not have been entertained by the Court.

The Registry wasted its time in keeping such Appeals on its file and because of its understanding that there are other compliances which are to be made. A time barred Appeal was sought to be revived only by making an application to have the delay condoned and that application was filed by way of Notice of Motion No.788 of 2014. That Notice of Motion was filed on 23-6-2014. That itself was beyond the statutory period and good

five months after the lodging of the Appeal. Be that as it may, that Notice of Motion was allowed and the delay was condoned.

4. Now the current motions and placed before us are to seek time to remove the office objections. Once the Appeals were entertained by condoning the delay, there was enough time to remove the office objections. Those were also not removed and that is why the Revenue thought that it will not be able to prosecute its Appeals on merit.

5. That is why it wishes to seek setting aside of the Registry's order dismissing the Appeals insofar as the other objections. While filing a cryptic affidavit in support, initially we had observed that the Commissioner and his officials are playing a blame-game. To cover up their lapses and deficiencies, they turned around and blamed their Advocates. They are of the opinion that their Advocates ought to inform them and at every stage of the matter, particularly as to which office objections have to be complied with or are to be removed. If no such communication is made by the Advocates, then the

Commissioner feels that he and his officers are not at fault. We are sorry to say that this is not what was expected from the Commissioner of Service Tax. If the officers are unaware of legal procedures, then, they have to be in touch with their Advocates and periodically. They cannot expect that the Advocate himself comes to their office and apprise them as to what further has to be done after the filing of an Appeal. Earliest this impression is removed from their mind as it is the duty of the officers to follow up the case, then, the better it would be for our system. This blame-game must be immediately stopped. We are expecting that this game will not be played further and as assured by Mr. Bangur in the light of a circular which is issued. There is a Legal Co-ordination Cell, Pune Zone and it would hereafter take care in terms of its Office Order dated 10-1-2017 and which has been circulated to all concerned. We would expect better co-ordination which was completely lacking earlier. We would also appreciate that the Revenue officials communicate with their Advocates periodically or rather regularly apprise themselves of the stages in which their Appeals

have to go through.

6. On purely and in larger public interest we accept the explanation placed on the additional affidavit filed today. We allow both the motions in terms of prayer clauses (a) to (c) and grant four weeks time, as prayed, to remove all office objections. The motions are made absolute accordingly.

7. It is only in these Appeals and since Mr. Bangur and Mr. Walve have taken pains to apprise the Commissionerate of all the lapses pointed out, that we do not impose costs.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)