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

NOTICE OF MOTION NO. 45 OF 2019
IN
CENTRAL EXCISE APPEAL (L) NO. 111 OF 2012

The Commissioner of Central Excise & Service Tax,
LTU, Mumbai ...Applicant/Appellant
vs
Sterlite Optital Technologies Ltd. & Ors. ...Respondents

Mr.Ram Ochani for Applicant.
Mr.Chirag Shetty with Bhagyashri Bhave I/b. Economic Laws Practice for Respondents.

CORAM : M.S. SANKLECHA &
S.C. GUPTE, JJ.

DATE : 24 JULY 2019

<u>P.C.</u> :

This application has been taken out to condone the delay of 1994 days in filing the present notice of motion seeking to set aside of the order dated 13 December 2012 passed by the Prothonotary & Senior Master rejecting the Petitioner's appeal under Rule 986 of the Bombay High Court (Original Side) Rules.

2 The affidavit in support of the motion, as originally filed, did not explain the delay from the year 2012 to 2017 in taking out this application. In fact, the affidavit in support states that after implementation of Goods and Service Tax Act (GST) from 1 July 2017, the case files were transferred to the present Commissionerate, i.e. the Daman Commissionerate. It further states that the office of Daman Commissionerate has no idea why the objections were not removed and

why no application was taken out by the earlier Commissionerate, i.e. Large Taxpayer Unit (LTU), during the period 2012 to 2017. Thus, time was taken by the Revenue on 6 June 2019 to file a further affidavit with better particulars.

3 Today, an additional affidavit dated 19 July 2019 of Mr.S.K. Kaushal, Assistant Commissioner of CGST & Central Excise, has been filed. We find that this affidavit does not make any attempt to explain the delay from the date of the order rejecting the Petitioner's appeal for non-removal of office objections on 13 December 2012 upto 19 September 2017 when this appeal was transferred to the present Commissionerate.

4 We note complete absence of any explanation for the delay in taking out the motion and prosecuting it from 2012 to 2017. This is in itself evidence of negligence on the part of the Revenue. No cause has been made out to condone the delay in filing the appeal.

5 Accordingly, as the condonation of delay application is rejected, no occasion to set aside the impugned order dated 13 December 2012 of the Prothonotary & Senior Master arises. Accordingly, the notice of motion is dismissed.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**