

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.33256 OF 2014

M/s. Avesta Pharma Pvt. Ltd.

Through the Representative

Kersi H. Tangri

: Petitioner.

Versus

The Appellate Authority (u/s. 127)

and ors.

: Respondents.

Mr. T N Sonawane i/by Mr. P S Hagare for the Petitioner.

Mrs. V S Nimbalkar AGP for the Respondent No.4.

Mr. R L Singh i/by M V Kini & Co. for the Respondent Nos.2 & 3.

CORAM : R. M. SAVANT, J.

DATE : 07th August 2015

P.C.

1 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 4/12/2014 passed by the Respondent No.1 herein by which order the Appeal filed by the Petitioner against the order of final assessment under Section 126 of the Electricity Act, 2003 came to be dismissed.

3 It is not necessary to burden this order with unnecessary details. Suffice it to state that the Appeal filed by the Petitioner came to be dismissed inter-alia on the ground that the Petitioner has not made the pre-deposit as

required for maintaining the Appeal under Section 127 of the said Act, and secondly on the ground that the said Appeal was not filed within the period stipulated in the said provision.

4 In so far as the first ground is concerned, it is required to be noted that the Petitioner has deposited an amount of Rs.Ten lacs and Thirty Thousand vide cheque dated 12/11/2014 with the MSEDCL. In so far as the second ground is concerned, it is required to be noted that the order was passed on 12/09/2014 and the Appeal was filed on 27/11/2014. Having regard to Section 127 of the said Act. It has been held that normal period of limitation is 60 days with further extension of 60 days and that no extension can be granted beyond the said period. A useful reference would be made to the judgment of the Apex Court reported in (2010) 5 SCC 23 in the matter of Chhattisgarh State Electricity Board vs. Central Electricity Regulatory Commission and ors.

5 In my view, without going into the issue of limitation, however, by setting aside the impugned order and by relegating the parties to the Appeal to be tried *denovo*, the above Writ Petition can be disposed of. Hence the following directions :-

[1] The Petitioner would be entitled to file an Application for

condonation of delay and the MSEDCL would be entitled to file its reply.

[2] The impugned order dated 4/12/2014 is quashed and set aside and the Appeal is remanded back to the Appellate Authority in view of the statutory compliance made by the Petitioner of making pre-deposit.

[3] The Appellate Authority to consider the issue of limitation denovo having regard to the facts of the present case as well as the judgment of the Apex Court which would be cited before it. Needless to state that the said issue would be considered by the Appellate Authority on its own merits and in accordance with law.

[4] Needless to state that the contentions of the parties are kept open for being urged before the Appellate Authority.

[5] The Writ Petition is accordingly allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]