

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.1409 OF 2015

DATED:29.1.2015

Between:

M/s. Resolute Electronics Private Limited
(previously known as QUAD Electronic Solutions
Private Limited),
#12-50/4/A
Next to Industrial Estate, Medchal
Hyderabad – 501401
R.R. District
Rep. by its Managing Director

... Petitioner

And

Union of India
Ministry of Finance
North Block, New Delhi
Rep. by its Secretary
and others

... Respondents

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

-
WRIT PETITION NO.1409 OF 2015

ORDER: (per the Hon'ble The Chief Justice Sri Kalyan Jyoti Sengupta)

This writ petition has been filed by the petitioner – assessee challenging the order dt.17.7.2013 passed by the Additional Commissioner of Customs, Central Excise and Service Tax.

We have heard Sri Vedula Srinivas, learned counsel for the petitioner, and Sri V. Gopalakrishna Gokhale, learned counsel for the respondents.

By the impugned order the Commissioner confirmed the demand as raised under Section 11A of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') and also imposed penalty of Rs.5,00,000/-. The aforesaid order was taken to appellate authority by the assessee with an application for condonation of the delay. However, the said appellate authority by order dt.26.2.2014 dismissed the application for condonation of delay observing that the appeal was presented beyond the condonable period, namely, the period that could be condonable under Section 35(1) of the Central Excise Act. Consequently, the appellate authority dismissed the appeal. This order of the appellate authority is not challenged before us. Thereafter, the assessee approached the learned Tribunal, namely, the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, by second appeal and the learned Tribunal dismissed the same as it was time barred holding that the appellant authority had no

power to condone the delay overriding the provision of Section 35(1) of the Act. So, that appeal was also dismissed. In the writ petition, the aforesaid two orders of the two appellate authorities are not challenged. Thus, it appears that the petitioner, after exhausting all the remedies, filed this writ petition.

2. However, the learned counsel for the petitioner argues that in essence the petitioner has no remedy as the appeal could not be filed within the condonable period. He further submits, with the support of the decision of the Supreme Court in the case of *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others*^[1], that when there is no remedy, then the alternative remedy is not a bar to entertain the writ petition.

3. We do not find that this judgment cited has any manner of application in this factual backdrop, as the writ petitioner has approached all the authorities unsuccessfully and no challenge has been made against these orders. Therefore, the writ petition on the factual backdrop is not entertainable at all.

4. Now we consider the petitioner's second contention that resorting to alternative remedy by preferring appeals knowingly being fruitless, is of no legal implication, as virtually the petitioner is now remediless, so much so it can come to Writ Court.

5. We think that the petitioner keeping eyes open allowed the period for preferring the appeal as well as that of for condonation of delay allowed to expire and thereafter he approached. In other words, the petitioner had fitter away its own remedy. Therefore alleged situation of remediless is its own creation. According to us, the provision of Section 35(1) of the Act is absolutely rigid and cannot be extended either directly or indirectly by the Court of law. We set out the provision of Section 35(1) of the Act hereunder:

"35. Appeals to Commissioner (Appeals):- (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer lower in rank than a Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals), within sixty days from the date

of the communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days."

6. It is clear that it is specific mandate that even Section 5 of the Limitation Act, 1963 by virtue of Section 29(2) thereof, will not be applicable beyond 90 days. We are further of the view that once this period is allowed to expire intentionally or unintentionally, then remedy is absolutely barred and no Court of law can entertain the matter. However, the petitioner availed alternative remedy unsuccessfully, so we are not considering this aspect in great detail.

7. Accordingly, this writ petition is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. There will be no order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

29.1.2015

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Note: Reportable.

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[\[1\]](#) (1998) 8 SCC 1