

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-9156-2015

Date of decision:- 11.05.2015

M/s Sturdy Industries Ltd.

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Rajiv Sharma, Advocate,
and Mr. S.K. Mukhi, Advocate,
for the petitioner.

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S.J. VAZIFDAR, A.C.J. (ORAL)

The petitioner has challenged the constitutional vires of
Section 35(1) of the Central Excise Act, 1944 (in short the Act) which reads
as under:-

“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) [hereafter in this Chapter referred to as the Commissioner (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.”

2. The petitioner contends that there was sufficient cause to condone the delay in filing the appeal. Admittedly, the appeal before the first appellate authority i.e. the Commissioner (Appeals) was barred in view of

Section 35(1) of the Act. Therefore, to this extent, the order of the Commissioner (Appeals) and the order of the CESTAT cannot be faulted. They were in conformity with the provisions of Section 35(1) of the Act. Indeed the orders were in conformity with the judgement of the Supreme Court in *M/s Singh Enterprises Vs Commissioner of Central Excise, Jamshedpur and others, CCE [2008 (221) E.L.T. 163 (S.C.)]*.

3. The petitioner had in fact challenged the order of the CESTAT by filing CWP-14559-2013 which was dismissed by an order and judgement of a Division Bench of this Court dated 29.10.2014. The petitioner challenged this judgement by filing a petition for Special Leave to Appeal being SLP (C)-10349-2015. By an order dated 01.04.2015, the Supreme Court allowed the appeal to be withdrawn with liberty to approach the appropriate forum for appropriate relief. It is pertinent to note that the constitutional vires had not been challenged in that writ petition. The liberty, therefore, to approach the appropriate forum was obviously to file an appeal against the order of the CESTAT and not another writ petition to challenge the same order.

4. In view of the orders passed in the earlier writ petition, it would not be appropriate to permit the petitioner to file another writ petition, albeit on different grounds.

5. The petition is, therefore, dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

11.05.2015
Amodh