$~34

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P. (C) 7120/2001

M/S. SUN PHARMACEUTICAL INDUSTRIES LTD. ..... Petitioner
Through: Mr. M.P. Devnath with Mr. Abhishek Anand and Mr. Yogendra Aldak, Advocates.

versus

UOI & ORS. ..... Respondents
Through: Mr. Sanjiv Narula, Sr. Standing Counsel with Mr. Sunil Dalal and Mr. Abhishek Ghai, Advocates.
Mr. Ripu Daman Bhardwaj, CGSC with Mr. Brajesh Kumar, Govt. Pleader for UOI/Resp-1&2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R
% **22.08.2016**

C.M. APPL.29398/2016 (for change of cause title)

For the reasons mentioned in the application, the cause title shall be appropriately amended; instead of "M/s Ranbaxy Laboratories Ltd.", the petitioner's name shall be substituted with "M/s. Sun Pharmaceutical Industries Ltd."

Application stands allowed.

W.P. (C) 7120/2001

In the present proceedings under Article 226 of the Constitution of India, the order of the Central Government - made in the revisional proceedings is impugned. The revisional authority held that the application made in the jurisdiction of the Maritime Commissioner where the export took place, for refund under Section 11B was time barred in terms of the text of the Act. The revisional authority had relied upon few decisions including the decision of the Supreme Court on the issue that where refund claims are to be processed and adjudicated upon, the terms of the statute would bind the parties.

The brief facts are that the petitioner had exported bulk drugs which qualified for the export rebate under Rule 12 of the Central Excise Act. 89 refund applications have been preferred. There is no dispute that these applications were made within the time prescribed under Section 11B of the Act. However, they were apparently made to the wrong Maritime Commissioner; instead of filing it before the appropriate jurisdictional Commissioner, i.e., in Bhiwadi or in Delhi where the exports took place, they were preferred in Mumbai where the petitioner had its registered office. As a consequence, when the applications were filed before the concerned Deputy Commissioner having jurisdiction, they were returned as time barred; the appeal to the Commissioner was also rejected. The revisional authority by its order dated 19.03.2001 held that since the Statute provided a fixed period of limitation without any relief of extension, in the contingencies applying in this case, the refund claim did not survive consideration.

Learned counsel contends that even though Section 14 (2) of the Limitation Act does not apply in strict terms of the Statute; nevertheless this principle cannot be ignored. Reliance is placed upon the order of this Court reported as *Barun Textile Processors v. Commissioner of Customs (Exports)*, 2016 (333) ELT 390 (Del.). Mr. Sunil Dalal, appearing for the respondents contends that the petitioner was well aware as to which authority possess jurisdiction to grant the rebate and refund. He relied upon Circular No.81/81/94 - CX dated 25.11.1994 which clarified by paragraph 2.4 (b) that option to seek refund could be exercised either by filing an application before the jurisdictional Commissioner having primary authority in respect of the manufactured goods or the Commissioner having jurisdiction over the Airport, Ports etc. from where the goods were dispatched. Since the assessee/petitioner did not prefer the application and in fact approached the correct Commissioner after the time prescribed, the refund claim could not have been considered at all.

The judgment in *The Commissioner of Sales Tax v. M/s Parson Tools and Plants, Kanpur*, (1975) 4 SCC 22 deals with the situation where a revision preferred beyond the period of limitation and even beyond the extended period allowed by the Statute it was held that an application under Section 14 (2) of the Limitation Act would not be allowed. At the same time, the Supreme Court was of the opinion that even though a specific provision, i.e., Section 10 enabled the revisional authority to extend the period prescribed on sufficient cause being shown - for a further sufficient period, the authority still retains discretion in exceptional cases of hardship to entertain the revision. In this context, it was stated as follows: -

> *"14. It cannot be said that by excluding the unrestricted application of the principles of Sections 5 and 14 of the*

Limitation Act, the Legislature has made the provisions of Section 10, unduly oppressive. In most cases, the discretion to extend limitation, on sufficient cause being shown for a further period of six months only, given by sub-section (3-B) would be enough to afford relief. Cases are no doubt conceivable where an aggrieved party, despite sufficient cause, is unable to make an application for revision within this maximum period of 18 months. Such harsh cases would be rare. Even, in such exceptional cases of extreme hardship, the revising authority may, on its own motion, entertain revision and grant relief."

The subsequent judgment in *M.P. Steel Corporation v. Commissioner of Central Excise,* 2015 (319) ELT 373 (SC) has surveyed the law on the subject - including *Parson Tools* - and concluded that the period from the cause of action till institution of appellate or revisional proceedings from original proceedings - which proved to be abortive appeal should be excluded.

In this case, what the petitioners were seeking was neither revisional nor appellate relief. Rather they were seeking a benefit which was admissible to them in terms of a Statute and the Notifications issued thereunder. That they were liable to pay customs duty for the imports made is not disputed; that for such imports upon export of the ultimate produce, they were entitled to revision/rebate is also not in dispute; it is rather an entitlement. This rebate was premised upon sound public policy, i.e., encouragement of export on foreign exchange earnings. Such being the case, the considerations as well as the construction to be placed upon Section 11B which applies to all manner of refunds - whether it is in case of excess payment of duty, amounts payable where no duty is leviable or in the case of refund unrelated to levy *per se* would vary. In a case where refund is claimed on account of the entitlement of an application under some scheme which is conceived in the larger public interest, strict adherence to the principle that an application made within the period of time to the wrong authority but subsequently filed before the correct authority would still be considered time barred, in our opinion, acts very unreasonably.

For these reasons, we are of the opinion that the refund claims should have been adjudicated as if they had been originally filed before the authorities having jurisdiction. That rebate was premised on the basis of jurisdiction, primarily applicable for assessment is a matter of convenience in the circumstances of the case.

As a result of the above discussion, the writ petition is allowed. The concerned Deputy Commissioner shall consider the refund claims and pass appropriate orders in accordance with law within three months from today.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 22, 2016
/vikas/