

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT. JUSTICE T. RAJANI

WRIT PETITION No.31573 of 2017

ORDER: (*Per VRS,J*)

The petitioner has come up with the above writ petition, challenging the refusal of the 4th respondent, namely, the Commissioner (Appeals), to condone the delay of 597 days in the petitioner filing an appeal under Section 85 (1) of the Finance Act, 1994.

2. Heard Ms. Santhi Chandra, learned counsel for the petitioner. Ms. Sundari R Pisupati, learned standing counsel for the Central Excise, Customs & Service Tax, takes notice for the respondents.

3. The Statute prescribes a period of three months under Section 85 (3) for filing an appeal. The proviso to sub-section (3) of Section 85 stipulates that the Commissioner (Appeals) can condone the delay up to a period of three more months.

4. Once the upper limit, up to which a delay can be condoned by an appellate authority, is stipulated by Statute, even the Court exercising jurisdiction under Article 226, cannot condone the delay.

5. Unfortunately, the petitioner filed an appeal before the 4th respondent with a delay of 597 days. Since the 4th respondent had a

limited power under the proviso to sub-section (3) of Section 85, he refused to condone the delay. The same cannot be found fault with.

6. Relying upon a judgment of the Gujarat High Court in *D.R. Industries Ltd. Vs. Union of India*¹, and the judgment of the Karnataka High Court in *Phoenix Plasts Company Vs. The Commissioner of Central Excise (Appeals)*², the learned counsel for the petitioner contended that this Court has power to condone the delay under Article 226.

7. But, we do not think that the decisions of the Gujarat High Court and the Karnataka High Court reflect the correct position in law. The Hon'ble Supreme Court has already held in *M/s.Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur*³ that even this Court does not have the power to condone the delay beyond the condonable period. Therefore, the writ petition deserves to be dismissed. Accordingly, it is dismissed.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

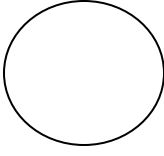
T. RAJANI, J.

18th September, 2017
cbs

¹ 2008 (127) ECC 61

² 2016 TIOL 905 HC KAR CX

³ 2008 (221) ELT 163 (SC)



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