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HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 19 of 2017

- Chhattisgarh Electricity Company Limited (Presently known as "Sarda Energy & Mineral Limited") Industrial Growth Centre, Phase-I, Siltara, Raipur (Chhattisgarh) 490001

---- Appellant

Versus

- Union of India, Through Commissioner, Central Excise, Customs & Service Tax, Raipur, Central Excise Building, Dhamtari Road, Tikrapara, Raipur (Chhattisgarh) 492001

---- Respondent

For Appellant	:	Shri Anurag Tiwari, Advocate.
For Respondent	:	Shri Maneesh Sharma and Shri Vinay Pandey, Advocates.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

Per Ajay Kumar Tripathi, Chief Justice

29.11.2018

1. Heard counsel for the Appellant and counsel for the Respondent / Revenue.

2. The tax appeal has been preferred under Section 35-G of the Central Excise Act, 1944 (for short, 'Act of 1944') against the decision and order dated 28.06.2016 passed by the Hon'ble Central Excise Customs & Service Tax Appellate Tribunal (for short, 'Tribunal'). The order of the Tribunal is Annexure P/1.

3. The Appellant had to move the said Tribunal when the Commissioner (Appeals) dismissed the appeal on the point of limitation since the appeal was preferred

after the period of limitation which could not be condoned in terms of the Section 35 (1) of the Act of 1944. Section 35(1) of the Act of 1994 is reproduced here 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:
>
> <u>[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.]</u>"

4. Admitted position is that the appeal was not filed by the present Appellant before the Commissioner (Appeals) within 60 days of the order of the Assessing Authority. It was further not filed within the additional 30 days for which power of condonation has been vested in the Commissioner (Appeals) in terms of the proviso of Section 35(1) of the Act of 1944. Beyond those period of 30 days, the statue does not permit any kind of condonation to be allowed by the Commissioner (Appeals). Therefore, if the appeal of the Appellant was presented after the 30th day i.e. beyond the extended period of limitation it was not condonable. The Commissioner (Appeals) was forced by law to dismiss the appeal as being time barred.

5. We are not unmindful of the fact that the Act of 1944 has been enacted with the object and purpose to collect duties of excise on goods manufactured and produced within the territory of India which have serious implications as to the revenue and finances of the Government of India. Therefore, in the wisdom of the Legislatures the adjudication of the disputes relating to the revenues at various levels are required to be heard and decided within a time frame, set in the statue itself.

6. Since the Act of 1944 is a special Act, therefore, the provisions of the Act itself will have to be relied upon and other statues of limitation cannot be borrowed or adopted to overcome the rigors of the statue which has fixed a time frame of limitation.

7. The power to condone the delay conferred upon the Commissioner (Appeals) ends if the appeal is preferred after 30 days of extended period and expiry of 60 days of initial limitation.

8. Learned counsel representing the Appellant submits that even though the Commissioner (Appeals) was not in error in dismissing the appeal being time barred, the Tribunal as well as the High Court can very well condone the delay in the interest of justice and allow the matter to be heard on merits.

9. Such an attractive argument cannot be entertained since it will have the effect of taking away the rigors of law which has been imposed by the Legislatures in the Act of 1944.

10. As we are well aware that in matters of limitation a right may subsist, but the remedy gets extinguished, therefore, by the conduct of the Appellant himself if he had extinguished his right by not moving the appellate authority in time then a via media cannot be found by urging that even though the Commissioner (Appeals) dismissed the appeal on grounds of limitation, the superior forum should circumvent the bar created against the remedy, which in turn will have the effect of setting aside an otherwise legal and valid order, passed by the Statutory Authority.

11. We, therefore, fail to appreciate and entertain the line of arguments to set aside the order passed by the Tribunal, since it will help him override the law.

12. We, therefore, in the above circumstances do not feel that the Tribunal was incorrect in not entertaining the appeal on merits and dismissing the same by refusing to interfere with the order of the Commissioner (Appeals).

13. Even the High Court, therefore, will not take away the effect of the law and the bar created under Section 35(1) of the Act of 1944 or its Proviso.

14. Appeal has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Brijmohan