Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6354 OF 2018

M/s Vortex Engineering Works ...Petitioner

Versus

Union of India & Ors. ...Respondents

Ms. A.A. Walawalkar a/w Mr. P.B. Joshi, Mr. Sahil Ansari, i/by Bipin Joshi, for the Petitioner.

Mr. Pradeep S. Jetly a/w Mr. J.B. Mishra, for the Respondents.

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA, JJ.

DATE : 3 October 2018

ORDER :

1. By the consent of both the parties, the Petition itself is being disposed of at the stage of admission.

2. This Petition under Article 226 of the Constitution of India challenges the order dated 6th October 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (for short "***the Tribunal***"). The impugned order dated 6th October 2017 dismisses the Petitioner's Appeal under Section 35C of the Central Excise Act, 1944 (for short "***the Act***").

3. The impugned order dated 6th October 2017 dismissed the Petitioner's Appeal from order dated 7th June 2017 passed by the Commissioner of Central Excise (Appeals). This by upholding the view of the Commissioner of Central Excise (Appeals) that as the Appeal filed before it was not only beyond the normal period of 60 days but also beyond the further period of 30 days, which in the maximum delay it can condone for sufficient reasons.

4. It is the case of the Petitioner that on 30th November 2015 the Additional Commissioner passed an order disallowing Cenvat credit and imposing penalty. This order

dated 30th November 2015 was received by the Petitioner on 11th December 2015. Immediately on 14th December 2015, the Petitioners filed an Application to the Additional Commissioner seeking a rectification/review of the order dated 30th November 2015, as according to the Petitioner, there were errors apparent on record. The aforesaid Application, we are informed is still pending as it has not yet been disposed of. Be that as it may, it is stated in the Petition that sometime in early June 2016, the officers of the Central Excise Department enquired of the Petitioner whether or not any Appeal had been filed against the order dated 30th November 2015 passed by the Additional Commissioner of Central Excise. This led to the Petitioner filing an Appeal on 11th June 2016 under Section 35 of the Central Excise Act, 1944 to the Commissioner of Central Excise (Appeals) from the order dated 30th November 2015.

5. By an order dated 25th April 2017, the Commissioner of Central Excise (Appeals) rejected the Petitioner's Appeal on the ground that it is beyond the aggregate

period of 90 days (60 + 30 days) available to file an Appeal before it under Section 35 of the Act.

6. Being aggrieved with the order dated 25th April 2017 of the Commissioner of Central Excise (Appeals), the Petitioner filed an Appeal to the Tribunal under Section 35B of the Act. By the impugned order dated 6th October 2017, this Appeal of the Petitioner was dismissed on the ground that same has been filed beyond the aggregate period of 90 days to file an Appeal as provided under Section 35B of the Act.

7. From the aforesaid facts, it is clear that the Petitioner was aggrieved with the order dated 30th November 2015 (received on 11th December 2015) passed by the Additional Commissioner of Central Excise confirming a demand. This grievance was sought to be addressed by filing on 14th December 2015 an rectification/review application before the Additional Commissioner of Central Excise. We are informed that the above Application dated 14th December 2015 has not

yet been disposed of. It was in early June 2016 that the Officers of the Respondents enquired of the Petitioner whether or not an Appeal had been filed from the Order dated 30th November 2015. This resulted in the Petitioner filing an Appeal on 11th June 2016 to the Commissioner of Central Excise (Appeals). Both the Commissioner of Central Excise (Appeals) as well as the Tribunal rejected the Petitioner's Appeal on the ground that there is no power in the Commissioner of Central Excise (Appeals) to condone the delay beyond the aggregate period of 90 days provided under Section 35 of the Act. This is not correct in view of the decision the Supreme Court in ***M.P. Steel Corporation Vs. Commissioner of Central Excise***[1]. In the above case, the Apex Court has held that although Section 14 of the Limitation Act, 1963 would not in terms be applicable to proceeding before quasi judicial authorities functioning under the Act, yet the principle of Section 14 of the Limitation Act, 1963 would apply to proceedings before the authorities under the Act.

1 ***2015(319) ELT 373 (S.C.)***

8. In the light of the aforesaid order of the Supreme Court in ***M.P. Steel Corporation*** (supra), the Tribunal ought to have considered whether or not the Petitioner has made out a case which would entitle it to the benefit of the principle available under Section 14 of the Limitation Act, 1963. That is to examine the facts and determine whether the delay in filing the Appeal to the Commissioner of Central Excise (Appeals) could be condoned on application of the above principle.

9. In the above view, the impugned order dated 6th October 2017 of the Tribunal is quashed and set aside. The Petitioner's Appeal is restored to the file of the Tribunal for fresh disposal on merits on consideration of the reason for the delay in filing the Appeal.

10. However, we must clarify that we have not examined the Petitioner's case on merits with regard to the applicability principle laid down in Section 14 of the Limitation Act, 1963 to the facts of this case. It is for the Petitioner to make

out appropriate case before the Tribunal, which would be considered and disposed of by passing an appropriate order thereon.

11. We also note that the Petitioner's application dated 14th December 2015 for rectification/review made to Additional Commissioner of Central Excise has not yet been disposed of. Therefore, the Additional Commissioner of Central Excise is directed to dispose it within four weeks from today. Non disposal of application by Authority under the Act causes undue hardship to the litigants.

12. The Petition is disposed of in the above terms. No order as to costs.

[RIYAZ I. CHAGLA J.] **[M.S. SANKLECHA, J.]**