Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1413 OF 2017

National Standard (India) Ltd. **...Petitioner**

Versus

Additional Commissioner **...Respondent**
Central Excise, Mumbai III

Ms. L. Maithili, i/by Mr. Shubro Dey, for the Petitioner.

Mr. Pradeep S. Jetly, for the Respondent.

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

DATE : 30 August 2018

Sharayu Pandurang Khot

Digitally signed by Sharayu Pandurang Khot Date: 2018.09.04 11:58:19 +1200

ORDER :

1. This Petition under Article 226 of the Constitution of India challenges the order dated 31st January 2017 passed by

the Additional Commissioner of Central Excise under the Central Excise Act, 1944 (for short "***the Act***").

2. At the very outset, we pointed out to the Petitioner that there is a statutory alternative remedy available under Section 35 of the Act to challenge the impugned order dated 31st January 2017 before the Commissioner Central Excise (Appeals). Therefore, we are not inclined to entertain this Petition in exercise of our extra ordinary writ jurisdiction.

3. Ms. Maithili, the learned Counsel appearing in support of the Petition submitted that the impugned order dated 31st January 2017 has been passed in breach of the principle of natural justice, therefore, warrants interference by this Court in writ jurisdiction. The breach of natural justice she complains of is that the Additional Commissioner who passed the impugned order, had granted the Petitioner time of the hearing on 18th January 2017 to make further submissions. However, without waiting for the Petitioner to make its further submissions, the

Additional Commissioner has passed the impugned order dated 31st January 2017. Thus, according to her, the impugned order is without effective hearing.

4. On perusal of the impugned order dated 31st January 2017, we find that it does not record that at the hearing further time was granted to the Petitioner to make further submissions. On the contrary, it records that at the personal hearing on 18th January 2017 the Petitioner relied upon the photocopies of certain documents and the earlier submissions made in this case. Therefore, from the record it is clear to us that the passing of the impugned order is in breach of principle of natural justice is a disputed position. Thus, disputed issue would be appropriately dealt with by the Appellant Authority under the Act.

5. In the above view, while disposing the Petition, we were inclined to extend time to the Petitioner to file the Appeal before the Commissioner of Central Excise (Appeals). This as the

Petitioner was bonafide prosecuting this Petition and the time spent here being excluded for purposes of filing an Appeal.

6. Shri. Jetly objected to the time being extended to file an Appeal before the Commissioner of Central Excise (Appeals). This he submits would be contrary to Section 35 of the Act. It is submitted that in terms of Section 35 of the Act the Commissioner of Central Excise (Appeals) has power to condone a delay beyond the normal period of 60 days and for a further period of 30 days. Besides, he submits moving this Petition was not bonafide as the Petitioner was put to notice by the preamble of the impugned order, that an Appeal under the Act was available. Thus, it is submitted that the period for filing an Appeal cannot be extended by this Court.

7. In the present facts, this Petition challenging the order dated 13th January 2017 (received on 13th February 2017) was filed on 10th April 2017 i.e. admittedly within the 60 days. This Petition was filed bonafide as according to the Petitioner, the impugned order is in breach in the principle of

natural justice. Therefore, would justify interference by the Court in its writ jurisdiction. We find that there is no delay and/or negligence on the part of the Petitioner in challenging the impugned order dated 31st January 2017. This on a bonafide belief that this Court will exercise its writ jurisdiction. The word '*bonafide*" only means honest/sincere, absence of deceit in prosecuting the Petition. However, we are not in agreement with the Petitioner's contention of a justified case to exercise our extraordinary writ jurisdiction. We find that an alternate efficacious remedy is available to the Petitioner, where he could get the same relief. Moreover, we are of the view that when the Act itself provides for a remedy to challenge an order under the Act, the same should not become a dead letter in the absence of acquiesce/accepting the order and/or negligence in challenging the order. In this case, we note that the Petitioner has not accepted the impugned order, but the forum chosen was not appropriate.

8. In fact the Apex Court in ***M.P. Steel Corporation Vs.***

Commissioner of Central Excise (Appeals)[1] on an identical/similar facts arising under the Customs Act, 1962 has taken a view that even where the statute provides for a period of limitation including the extended period, yet the *quasi* judicial authorities such as Commissioner of Customs (Appeals) would have powers to condone the delay by invoking the principle of Section 14 of the Limitation Act, 1963.

9. In the above view, in the present facts we condone the delay in filing the Appeal from the impugned order dated 31st January 2017, provided it is filed within a period of two weeks from today. In case the Petitioner does file an Appeal with the Commissioner of Central Excise (Appeals) within the above time of two weeks, he would consider the Appeal on merits. This of course on the Petitioner satisfying the Appellate Authority of complying with the other requirements for filing an Appeal, including the statutory deposit in terms of Section 35 of the Act.

1 ***319 ELT 573***

10. Accordingly, the Petition is disposed of in the above terms.

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