Sharayu Khot.

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

WRIT PETITION NO. 1294 OF 2017

Balmer Lawrie & Co. Ltd. ...**Petitioner**

Versus

The Union of India & Ors. ...**Respondents**

Ms. Padmawati Patil, i/by Manasi Patil, for the Petitioner.

Mr. Swapnil Bangur, a/w Ms. Pooja Thorat, Mr. Ankul Seth, for the Respondents.

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

DATE : 30 August 2018

ORDER :

1. This Petition under Article 226 of the Constitution of India challenges recovery letter dated 18th April 2017 issued by the Deputy Commissioner of Central Excise, Customs & Service Tax, Divison-V, Silvassa. The impugned order dated 18th April

2017 seeks to recover the arrears of Revenue arising out of the order in original passed in respect of one M/s. Javs Engineering India Limited from the Appellant under Section 11 of the Central Excise Act, 1944 ("***the Act***") and the Rule 230 of the Central Excise Rules 1944 ("***the Rules***").

2. The Petitioner's grievance is that the recovery proceedings cannot be initiated against them, as they are not covered by the provisions of Section 11 of the Act at the relevant time when it purchased specified assets under the agreement of purchase dated 26th October 1999. Thus, the impugned recovery notice dated 18th April 2017 is without jurisdiction.

3. However, we are of the view that the issue raised by the Petitioner in this case is of the appropriate interpretation of the Act. It is agreed position between the parties that the Appeal would lie from the Communication dated 18th April 2017 to the Commissioner of Central Excise (Appeals) under Section 35 of the Act.

4. In the above view as there is an efficacious remedy available under the Act, we decline to entertain this Petition. However, bearing in mind that the Petitioner has moved this Court immediately on receipt of communication dated 18th April 2017 by filing this Petition on 2nd May 2017, the time spent bonafide in prosecuting this Petition is condoned by us. In case the Petitioner files an Appeal within a period of two weeks from today and also complies to the satisfaction of the Commissioner of Central Excise (Appeals) the conditions for filing an Appeal (including Section 35F of the Act). We have condoned the delay in view of the decision of the Supreme Court in ***M.P. Steel Corporation Vs. Commissioner of Central Excise Appeals***[1], wherein it has been held that time spent bonafide in prosecuting a challenge in a Court not having jurisdiction, (in this case refusal to exercise jurisdiction in view of alternative relief) to be excluded on the basis of Section 14 of the Limitation Act, 1963. In the above circumstances, if the Petitioner filed an Appeal within the period of two weeks from

1 ***319 ELT 373***

today and satisfies the Commissioner Central Excise (Appeals) of complying with all the statutory requirements for entertaining the Appeal, it shall be decided on merits.

5. Accordingly, the Petition is disposed of in terms of the above direction.

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