Sequeira

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9642 OF 2019

FDC Ltd.
-Aurangabad. .. Petitioner
Vs
The Union of India and others .. Respondents

Mr.Prasad Paranjape a/w Mr.Jas Sanghavi i/b PDS Legal, for the Petitioner.

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

CORAM : M.S.SANKLECHA &
NITIN JAMDAR, JJ.
Date : 13 September 2019.

P.C. :

Heard Mr.Paranjape, learned counsel appearing for the Petitioner and Mr.Jetly, learned counsel appearing on behalf of Respondents.

2. The Petitioner has challenged the order passed by the Customs, Excise and Service Tax Appellate Tribunal Mumbai dated 20 November 2018 rejecting an application for Rectification.

3. The Petitioner is engaged in manufacture of medicines. Some of the goods that Petitioner manufactures are physician

samples which are not for sale but for distribution to the doctors free of costs. On this aspect certain circulars were issued in respect of the Central Excise by the Government and it led to some persons filing Petitions in this Court.

4. In the meanwhile, the officers from the Preventive Wing of Commissioner of Central Excise visited the premises of the Petitioner. They were of the opinion that the Petitioner was not paying duty on the free Physician Samples but were paying Central Excise duty value of the cost of production. A show cause notice was issued to the Petitioner. The Additional Commissioner, by order dated 23 March 2009, confirmed the demand and also imposed a penalty. The Petitioner filed an appeal to the Commissioner (Appeals) which was rejected on 14 October 2009. The Petitioner filed further appeal to the Tribunal which was dismissed on 29 December 2017.

5. The Petitioner thereafter moved an application for Rectification, as according to the Petitioner, the Tribunal did not give any finding on the submission of the Petitioner that the demand is barred by limitation. This application has been dismissed by the impugned order dated 20 November 2018.

6. On perusal of the impugned order we find that the grievance of the Petitioner that it is entirely unreasoned, is justified. In the Rectification application the Petitioner has stated that the ground of limitation was taken up in the Appeal Memo and Written

submission but has not been considered. The impugned order is in three sentences and reads thus :

> *'The applicants have filed these miscellaneous applications, seeking for Rectification of Mistake in the orders dated 28.02.2018, 13.03.2018 and 26.04.2018 passed by this Tribunal. On going through the case records vis-a-vis the grounds urged in the miscellaneous applications filed by the applicants, we do not find any justifiable reason to interfere with the said orders passed by the Tribunal. Accordingly, the same are dismissed.'*

On the face of it there are no reasons in this order as to why the grievance of the Petitioner set out in the Rectification application was not justifiable.

7. In these circumstances, we allow the Writ Petition. The impugned order dated 20 November 2018 passed by the Tribunal is set aside. The Rectification application stands restored to the file of the Tribunal to be decided as per law. We make it clear that what is stated in this order is only to stress the need to remand and restore the application and not to be construed as reflection on the merits of the Petitioner's case in the Rectification application.

8. Writ Petition disposed of in above terms.

(NITIN JAMDAR, J.) ***(M.S.SANKLECHA, J.)***