IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1768 OF 2019

PSL Tex-Styles Pvt. Ltd. .. Petitioner.
v/s.
Union of India Through The Principal
Commissioner And Ex-Officio And 3 Ors. .. Respondents.
....
Mr. Joseph J. Thattil, i/b. Thattil & Co., for the Petitioner.

Mr. Pradeep S. Jetly, a/w. Mr. J.B. Mishra, for the Respondents.
....
CORAM: M.S.SANKLECHA, &
S.C. GUPTE, JJ.

DATE : 26 JULY, 2019.

P.C:-

. At the request of the parties, the petition is taken up for final disposal at the stage of admission.

2. This petition, under Article 226 of the Constitution of India, challenges the order dated 20 December 2018, passed by Respondent No.1, i.e. Principal Commissioner & Ex-Officio, Additional Secretary to Government of India. The impugned order dated 20 December 2018 rejected the Petitioner's revision application under Section 35EE of the Central Excise Act, 19wp7687-19.pdf44 ("the Act"). This dismissal was as a consequence of having rejected the Petitioner's application for condonation of delay of 1005 days in filing the revision application.

3. wp7687-19.pdfThe grievance of the Petitioner to the impugned order dated 20 December 2018 is that there is no delay

on its part in filing the review application under Section 35EE of the Act as the order dated 15 March 2011, passed by the Commissioner (Appeals), Central Excise, was received by the Petitioner as on 18 December 2013 and, immediately thereafter, the revision application was filed. Nevertheless the impugned order dismissed the condonation of delay application filed as a matter of abundant caution, by holding that the Applicant has not adduced any evidence in support of its condonation application that the order dated 15 March 2011 was not received by it at the time when it was passed.

4. It was and is the Petitioner's case as pleaded before Respondent No.1 that there is no delay in filing the revision application as the order dated 15 March 2011 was received by it only on 18 December 2013. It was received for the first time only from the Additional Commissioner of Central Excise when the Petitioner's representative visited his office for a separate hearing. The appeal, it is the Petitioner's case, was filed immediately thereafter. In the aforesaid facts, it was clarified by the Petitioner in its application that the condonation application is being filed only as a matter of abundant caution.

5. We find that there is no reason to disbelieve the statement of the Petitioner on oath that the order dated 15 March 2011 of Commissioner (Appeals), being impugned before the revisional authority, was received on 18 December 2013. This particularly in the absence of any evidence being led by the Revenue, that the order dated 15 March 2011 of the Commissioner (Appeals) was served in the manner provided in Section 37C of the Act. Therefore, the period of three months for filing of the revision in terms of Section 35EE of the Act has to be computed

from the communication of the order dated 15 March 2011 to the parties which has taken place only on 18 December 2013. Thus the revision application is in time. It is unfair on the part of the Revenue to expect the Petitioner to prove the negative of not having received the order before the date he stated on oath to have received the order. It is for the Revenue to establish by some evidence the fact that the order was received by the Petitioner on a date prior to the date being claimed by the Petitioner or that it is deemed to have been received by virtue of the provisions of Section 37C of the Act.

6. In the above view, it would be appropriate to set aside the impugned order dated 20 December 2018 and restore the Petitioner's revision application before Respondent No.1 for the consideration on merits. We have held that Respondent No.1 was not justified in rejecting the Petitioner's application on account of delay, as, in fact, there is no delay on the part of the Petitioner in filing the revision from the order dated 15 March 2011, which has been received by the Petitioner on 18 December 2013.

7. Petition allowed in above terms.

(S.C. GUPTE,J.) **(M.S.SANKLECHA,J.)**