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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 11.12.2019

+ W.P.(C) 13002/2019

SUSHIL SHARMA

..... Petitioner

Through Mr. Vikas Dutta, Mr. Siddharth
Silwal, Mr. Shiva Sambyal and Mr. Ujjwal
Nagaich, Advs.

versus

BSES RAJDHANI POWER LTD & ANR

..... Respondents

Through Ms. Anju Thomas, Adv. for Mr. Sunil
Fernandes, Standing Counsel for BSES-RPL

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

CM APPL. No. 53004/2019

Allowed, subject to all just exceptions.

W.P.(C) 13002/2019 and CM APPL. No. 53003/2019

1. By this petition, the petitioner seeks to impugn the order dated 29.10.2019 passed by the Appellate Authority/ADM under Section 127 of the Electricity Act, 2003.
2. The case of the petitioner is that an inspection of the premises being S-52, SF, GK-I, New Delhi took place on 03.12.2016 by a team of the respondent BSES. A provisional assessment order was passed by respondent No. 2 on 26.12.2016 imposing a penalty of Rs.88,153/- on the basis of the

inspection report. On 11.01.2017, a final assessment order was passed ex parte by respondent No. 2 holding that the electricity connection was being used for paying guests-cum-hostel boys with per bed set up. The electricity connection was later disconnected. It is claimed that the petitioner discovered the provisional assessment order much later. The petitioner thereafter preferred an appeal against the said assessment order before the Appellate Authority. By the impugned order dated 29.10.2019, the Appellate Authority dismissed the petition on account of limitation and also on the merits of the case.

3. Learned counsel for the petitioner relies upon the judgment of the Division Bench of the Allahabad High Court in the case of ***Commissioner, Customs, Central Excise and Service Tax vs. Monsanto Manufacturer Pvt. Ltd., 2014 SCC OnLine All 16157*** to contend that where the appeal is being dismissed on limitation then the appellate authority should not have adjudicated the matter on merits. He secondly tried to submit that the appeal was not barred by limitation. However, after some arguments, he conceded that the appeal was barred by limitation and had been filed beyond the period of 30 days as prescribed under Section 127 of the Electricity Act. He however submits that he was not aware that the Appellate Authority was seeking to dismiss the matter on limitation and hence, did not move an application for condonation of delay in filing of the appeal.

4. The Allahabad High Court in ***Commissioner, Customs, Central Excise and Service Tax vs. Monsanto Manufacturer Pvt. Ltd.(supra)*** has relying upon the judgment of the Supreme Court in the case of *State Bank of India vs. B.S. Agriculture Industries (I), (2009) 5 SCC 121* held as follows:-

“19. Though in the appeal by the assessee several questions of law have been framed, the following question has been pressed at the hearing:

Whether the Tribunal having held that proceedings were barred by limitation and proceedings were liable to be quashed on the ground of limitation, the Tribunal committed an illegality in deciding the question on merits. Hence is the finding of Tribunal on merits liable to be set aside?

20. The appeal is admitted on the following question of law and is by consent taken up for final hearing.

21. The Tribunal came to the conclusion that the demand by the Revenue was beyond the period of limitation of one year prescribed under section 73(1) of the Finance Act, 1994 and that the period of five years could not have been invoked. That part of the judgment of the Tribunal has been confirmed in the companion appeal. Once that be the position and the Tribunal having come to the conclusion that the extended period of limitation could not have been validly applied the Tribunal, in our view, acted outside its jurisdiction in entering upon the merits of the dispute on whether the demand for duty should be confirmed. Once it is held that the demand is time-barred, there would be no occasion for the Tribunal to enquire into the merits of the issues raised by the Revenue.

22. In *State Bank of India v. B.S. Agriculture Industries (I)*, (2009) 5 SCC 121, the Supreme Court dealt with a situation where the consumer forum had held that the complaint was barred by limitation but had nonetheless proceeded to decide the issue on merits. Holding that this would amount to an illegality, the Supreme Court observed:

12. As a matter of law, the consumer forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned

for the reasons recorded in writing. In other words, it is the duty of the consumer forum to take notice of section 24A and give effect to it. If the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside.” Consequently; since the Tribunal was justified, as we have held, in coming to the conclusion that the demand was time-barred, there was no occasion for the Tribunal to enter upon the merits of the dispute. We, accordingly, answer the question of law as framed by the assessee in the affirmative and in favour of the assessee.”

5. In view of the above stated legal position, it is manifest that the Appellate Authority should not have while dismissing the appeal on limitation adjudicated the issue on merits. To that extent, the impugned order suffers from infirmity. The said order is liable to be set aside.

6. Learned counsel for the petitioner states that he may be granted an opportunity to move the Appellate Authority with an application for condonation of delay under Section 5 of the Limitation Act. As the impugned order has long term repercussions on the petitioner inasmuch as he will be liable to pay tariff on commercial rates instead of residential rates, it would be in the interest of justice that an opportunity is granted to the petitioner to move the Appellate Forum with an appropriate application seeking condonation of delay in filing the appeal.

7. Accordingly, I set aside the impugned order. The matter is remanded back to the Appellate Authority to consider the matter afresh. Liberty is granted to the petitioner to move an appropriate application as per law. The Appellate Authority is requested to expeditiously deal with the appeal.

8. With the above directions, the present petition stands disposed of.
Pending application also stands disposed of.

JAYANT NATH, J

DECEMBER 11, 2019

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