

CWP-8357-2005 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CWP-8357-2005 (O&M)

Date of decision:-04.09.2023

M/S GLAXO SMITHKLINE CONSUMER HEALTHCARE

.... Petitioner

VS

JOINT SECRETARY, GOVT. OF INDIA, DEPTT. OF REVENUE

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Amar Pratap Singh, Advocate
Mr. Ankit Awal, Advocate for the petitioner.

Mr. Rishabh Kapoor, Senior Standing Counsel
for the respondents.

MANISHA BATRA, J. (Oral)

Challenge in this writ petition is to order dated 23.09.2004 (Annexure P-10), passed by the Joint Secretary to the Government of India, Department of Revenue, New Delhi, i.e. respondent No.1 whereby the revision application filed by the petitioner under Section 35EE of the Central Excise Act, 1944 (for short 'Act, 1944') against the order dated 14.02.2003, passed by respondent No.2 had been dismissed.

2. Briefly stated the facts of the case are that the petitioner-company had manufactured malted food serial mal extract (known as DMI-70) at Nabha and had got it exported from its factory situated at Ballabhgarh after making payment of duty. It had availed credit of duty

and utilized the same for clearance of other products manufactured by it. Show cause notices were issued against the petitioner by the Central Excise Department on 04.10.1995 and 07.03.1996 on the allegation that the credit taken on DM170 was irregular as no manufacturing activity was undertaken at Ballabhgarh. The petitioner filed reply to the show cause notices. However, vide order dated 01.05.1996, the Collector of the Central Excise Department upheld the stand taken by the department while holding that the petitioner was entitled to rebate of duty paid at Nabha on DMI-13. The petitioner thereafter, filed rebate claims on 17.05.1996 with the Assistant Commissioner of Excise, Patiala seeking rebate of the duty paid for an amount of Rs.18,03,484/- in respect of exports made by it during the period of March, 1995 to September, 1995. Due to some jurisdictional problem, its rebate claim was not decided by the said authority. Deputy Commissioner, Patiala passed an order dated 24.08.2001, rejecting the claim of the petitioner for grant of rebate. The petitioner preferred an appeal against the said order before respondent No.2, who vide order dated 14.02.2003 rejected its claim.

3. It was further submitted by the petitioner that aggrieved by the order of respondent No.2, it filed an appeal before the Tribunal which was dismissed vide order dated 08.03.2004 on the ground of lack of jurisdiction. However, the tribunal specifically held that the period during which appeal had been pursued by the petitioner was not to be counted for the purpose of calculation of period of limitation as provided under Section 35EE of the Act by the revisional authority. The petitioner then

filed a revision application before respondent No.1 against the order dated 14.02.2003 on 16.02.2004 and also moved a separate application seeking condonation of delay in filing revision application on account of pursuing a remedy before a wrong Forum. The said application had been dismissed by respondent No.1 vide order dated 23.09.2004.

4. The petitioner has challenged the order dated 23.09.2004 on the grounds that there was sufficient cause for it to not to file application with the revisional authority within the prescribed time limit as it was pursuing remedy before a wrong forum under a bonafide plea. It was submitted that respondent No.1 overlooked the fact that the revision filed by the petitioner had been listed before the tribunal for several dates but till 08.03.2004, no objection had been taken by the tribunal with regard to the maintainability of the revision before it. It was also submitted that since the application before respondent No.1 had been filed within a period of 10 days from the date of passing order by the tribunal therefore, there could not be any unjustified delay in filing the revision application and respondent No.1 therefore, committed an error in dismissing the application filed by the petitioner for condoning the delay for filing the revision petition. With these submissions, it was urged that the order passed by respondent No.1 on 23.09.2004 was liable to be set aside and the claim of the petitioner for grant of rebate claims deserved to be allowed by way of deciding its application on merits by respondent No.1 and by setting aside order dated 14.02.2003 passed by respondent No.1.

5. The respondents filed a joint written statement alleging that

the revision filed by the petitioner was rightly dismissed by the competent authority as it was barred by time. It was also submitted that the writ petition filed by the petitioner was not maintainable as the claim of the petitioner for seeking rebate had been correctly rejected by the adjudicating authority and the appellate authority. While controverting the remaining pleas, dismissal of the petition had been prayed for.

6. The petitioner also filed rejoinder by way of affidavit to the written statement controverting the pleas taken therein.

7. Learned counsel for the petitioner argued that order dated 23.09.2004 was liable to be quashed as it was not sustainable in the eyes of law. Respondent No.1 while passing this order had ignored the fact that in application filed by the petitioner seeking condonation of delay in filing the revision application, the petitioner had specifically pleaded that the period which was spent from the date of filing of appeal before the Tribunal till 08.03.2004 when this appeal was dismissed, was not to be counted for the purpose of calculation of period of limitation. Respondent No.1 also ignored that even the tribunal had specifically held that the period for which appeal had been pursued before it was not to be counted. He argued that respondent No.1 wrongly held that no convincing reason had been given by the petitioner for pursuing the matter before the Tribunal. He submitted that the remedy before respondent No.2 had been bonafidely pursued by the petitioner, therefore, the provisions of Section 14(2) of the Limitation Act were applicable and the period spent in pursuing this appeal was liable to be excluded while

calculating the period of limitation for filing the revision application. With these broad submissions, it was urged that the petition deserved to be accepted as the order passed by respondent No.1 was against the principles of natural justice. To fortify his argument, learned counsel for the petitioner has relied upon authorities as *Gilco Exports Ltd. Vs. Union of India*, 2015(317) E.L.T. 229 (P&H) and *Ivp Limited Vs. Union of India*, 2018(8) G.S.T.L.356.

8. Per contra, it was argued by learned counsel for the respondents that the order passed by respondent No.1 did not warrant any interference as the same was well reasoned. He argued that along with the copy of order dated 14.02.2003, which was passed by respondent No.2, a preamble having a specific recital that the revision application against the order-in-appeal lied before the Joint Secretary to the Government of India within 3 months of the impugned order in appeal, was attached. However, still the petitioner, by ignoring the contents of the preamble chose to file appeal before respondent No.2 and therefore, the lapse on the part of the petitioner for approaching wrong forum to relegate to its remedy could not be stated to be bonafide at all. Hence, he argued that the petition was devoid of any merits and was liable to be dismissed.

9. We have given due deliberations to the contentions as raised by both the sides and have carefully gone through the record and on an assessment of the same, we are of the considered opinion that the present petition deserves to be allowed for the reasons to be discussed

hereinafter.

10. While passing the impugned order dated 23.09.2004, respondent No.1 had not gone into the merits of the case and had dismissed the revision application as preferred by the petitioner challenging order dated 14.02.2003 passed by respondent No.2, by holding that the same was time barred as it had been filed beyond period prescribed under the statute and by observing that the petitioner had not given any convincing reason for pursuing the matter before respondent No.2. Undisputedly, a revision application against an order passed under the provisions of the Act, 1944, by the appellate authority can be filed within 3 months from the date of communication of the order to the applicant and as per proviso to Section 35EE (2), if the Central Government is satisfied that the applicant was prevented by any sufficient cause for presenting the revision application within the period of 3 months, it may allow the same to be presented within a further period of 3 months. Meaning thereby that as per provision of Section 35EE, a revision application could not be entertained beyond the maximum period of 6 months from the date of communication to the applicant of the order challenged. However, it may be mentioned that the well settled proposition of law that even if a statute imposes embargo upon power of an authority to condone the delay by providing a specific period up to which such delay can be condoned, nonetheless, the time spent by the applicant in prosecuting wrong proceedings which are bonafide with due diligence can be excluded while computing the period

of limitation, cannot be ignored. In this regard, we draw reliance upon **M. P. Steel Corporation Vs. Commissioner of Central Excise**, 2015(319) E.L.T. 373 (SC) wherein Apex Court held that though there was no power to condone the delay in filing application under Section 35-C of the Act, 1944 and though the statute imposed embargo on the power of the Tribunal to condone the delay by providing that delay only up to the period of 60 days could be condoned, the principle of Section 14 of the Limitation Act based on advancing cause of justice would certainly apply to exclude time taken by the applicant in prosecuting the proceedings which were bonafide and with diligence and the time spent in prosecuting wrong proceedings could be excluded while computing the period of limitation.

11. Reference can also be made to **IVP Ltd's** case (supra) wherein a Division Bench of High Court of Bombay was dealing with a petition wherein the order of the Customs, Excise and Service Tax Tribunal in an application filed under Section 35-C(2) of the Act, 1944 was under challenge. The tribunal had observed that there was no provision under sub-Section 2 of Section 35-C to condone the delay and had dismissed the application on the ground of lack of territorial jurisdiction. The High Court of Bombay while discussing **M.P. Steel Corporation's** case (supra) had observed that the principles of Section 14 of the Limitation Act, which were based on advancing the cause of justice would apply to exclude time taken in prosecuting proceedings which were bonafide and with due diligence pursued, which ultimately

ended without a decision on the merits of the case.

12. We further rely upon ***Gilco Limited's*** case (supra) wherein the petitioner had approached appellate Tribunal under the Act, 1944 aggrieved by the order passed by Commissioner (Appeals). The tribunal dismissed the appeal by holding that it had no jurisdiction to entertain the same and directed the petitioner to approach the revisional authority. The revisional authority dismissed the petition as being barred by limitation and did not exclude the period spent before the Tribunal by considering Section 14 of the Limitation Act. The petitioner filed writ petition challenging the order passed by the revisionsal authority. A co-ordinate Bench of this Court had observed that the Tribunal had rejected the contentions raised by the petitioner without considering the embargo and applicability of Section 14 of the Limitation Act, though the same applied. The writ petition was accordingly allowed while placing reliance upon another judgment of this Court cited as M/s ***Sonia Overseas Pvt. Ltd. Vs. Union of India and others***, 2015(316) E.L.T. 578 wherein, while considering the applicability of Section 14 of the Limitation Act in the proceedings under the Customs Act, 1962 (for short 'the Act, 1962'), it was held that Section 14 of the Limitation Act was applicable to the proceedings under the Act, 1962 in respect of the appeal provided under Section 128 and the time spent in the High Court in abortive attempt to invoke its jurisdiction under Article 226/227 of the Constitution will have to be excluded. It was observed that bonafide of the petitioner in pursuing the remedy under Article 226 were never in dispute in that case. Similar

proposition of law was laid down by the High Court of Gujarat in ***Choice Laboratory Ltd Vs. Union of India***, 2013(315)ELT 197.

13. The ratio of law as laid down in the above cited cases is squarely applicable to the facts of the present case, as the petitioner in this case had filed appeal against order dated 14.02.2003 before respondent No.2 though the said order was required to be challenged by filing revision application before respondent No.1. It is not in dispute that against the order dated 14.02.2003, the petitioner had filed appeal before the Tribunal within time. This appeal remained pending till 08.03.2004 and it was only then on that day that it was held to be not maintainable. No decision had been taken on merits by the Tribunal. The Tribunal had specifically observed that the period which was spent by the petitioner in pursuing the appeal may not be counted for the purpose of delay in filing the revision petition. Along with the revision application, the petitioner had filed an application for condoning the delay in filing the said application before respondent No.1. The respondent No.1 however, dismissed the revision application without passing any order on application for condonation of delay and by holding that the revision was time barred and that no convincing reason had been given by the petitioner for pursuing the matter before the Tribunal. The respondent No.1 revisional authority completely ignored the time spent by the petitioner before the Tribunal. The observation made by respondent No.1 that as there was a specific recital in the preamble attached with the order in challenge that the petitioner could relegate to revisional authority for

its remedy, therefore, not resorting to the action of the filing revision application before respondent No.1 amounted to malafide, cannot be accepted in view of the fact that first of all there is nothing on record to show that any such preamble had been attached with the copy of order dated 14.02.2003, which was supplied to the petitioner and secondly, that even if it was so, still it could not be assumed that the petitioner ignored the said recital due to some malafide. It was not a case when the petitioner was not pursuing any remedy and in our opinion as long as the petitioner bonafidely pursued a legal remedy, then even if the said remedy turned down to be abortive later on, the time taken in pursuing that remedy is to be excluded being jurisdictionally deficient as otherwise the results would be anomalous.

14. As per the discussion made above and looking into the entire issue from the angle that the petitioner had not only bonafidely file its appeal before the forum which lacked jurisdiction but pursued the same under a bonafide belief, we quash the order dated 23.09.2004 as passed by respondent No.1 being not sustainable and restore the file of the revision application No.195/95/2004-RA to respondent No.1-Joint Secretary (Revision) Government of India, (revisional authority), New Delhi for deciding the application for condonation of delay as well as the revision in accordance with law. The petition stands allowed.

15. The parties are directed to appear before respondent No.1 i.e. Joint Secretary (Revision) Government of India, Revisional authority on 31.10.2023.

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16. Miscellaneous application, if any, also stands disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

04.09.2023
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No