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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.16290 OF 2024

Mayuresh Enterprises

..

Petitioner

Versus

Deputy Commissioner CGST & Ors

..

Respondents

Mr. Aayush Kedia a/w Ms. Rutvi Soni i/by Jain Law Partners LLP for the petitioner.

Mr. Siddharth Chandrashekhar i/by Ms. Sangeeta Yadav for respondent Nos.1 and 2.

Ms. S.D.Vyas, Addl. GP a/w Ms. Dhruti Kapadia AGP for respondent No.3.

**CORAM : M. S. Sonak &
Jitendra Jain, JJ.**

DATE : 10 December 2024

PC:-

1. Leave is granted to place the correct copy of the impugned order on record.

2. Heard learned counsel for the parties.

3. The challenge in this case is to the impugned order dated 30 March 2023 by which the Commissioner has not condoned the delay of 30 days on the ground that this delay was beyond the maximum condonable period provided in the Statute read with the decision of the Hon'ble Supreme Court extending the period of limitation during the

Covid pandemic.

4. The Commissioner, in paragraph 5.02, has followed the decision of the Hon'ble Supreme Court regarding the extension of the limitation period during the pandemic. However, the Commissioner has concluded that after accounting for the excluded period and a further grace period of 90 days, the appeal was filed beyond that period.

5. The petitioner did not even file any appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) within the prescribed limitation period. Not that such an appeal could have been helpful to the petitioner, given the law on the subject.

6. In *Assistant Commissioner Vs. Glaxo Smith Kline Consumer Health Care Limited*¹, the Hon'ble Supreme Court held that delay cannot be condoned in any appeal preferred after the maximum prescribed condonable period. The Hon'ble Supreme Court held that the powers of the High Court under Article 226 of the Constitution are wide. Still, they are not wider than the plenary powers bestowed on this Supreme Court under Article 142 of the Constitution. Further, what the Supreme Court cannot do by exercising powers under Article 142, the High Courts can never do, under Article 226. The Court held that neither jurisdiction under Article 142 nor writ jurisdiction under Article 226 can be exercised when invoked to undermine or defeat the applicable statutory

¹(2020) 19 SCC 681

regime.

7. The division bench of this Court in ***Oriental Export Corporation vs. Union of India***² has held that fiscal and regulatory enactments create specific statutory remedies against orders of adjudication by quasi-judicial bodies and provide a period of limitation for the same. A writ petition cannot be sustained where a statutory remedy was not availed of within the limitation provided by law.

8. Considering the above decisions and noting that the Commissioner's decision is in accord with them, no case is made to interfere with the impugned order. This petition is accordingly dismissed without any order for costs.

9. The interim order, if any, stands vacated.

10. The interim application, if any, is disposed of.

(Jitendra Jain, J.)

(M. S. Sonak, J.)