(2014) 12 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 12812 of 2014 and C.W.P. No. 1775 of 2012

Gilco Exports Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 14

Citation : (2015) 317 ELT 229 : (2015) 178 PLR 573

Hon'ble Judges : Rajive Bhalla, J;B.S. Walia, J

Bench : Division Bench

Advocate : Jagmohan Bansal, Advocates for the Appellant; Kamal Sehgal, Advocates for the Respondent

Judgement

Rajive Bhalla, J.

1. By way of this order, we shall decide CWP Nos. 273 and 1775 of 2012 as challenge in both the petitions is to a similar order dated 4-7-2011, passed by the Revisional Authority namely the Joint Secretary (Revision), Government of India. Counsel for the petitioner submits that against order passed by the Commissioner (Appeals), the petitioner approached the Tribunal. The appeal before the Tribunal was dismissed by holding that it has no jurisdiction to entertain the appeal and consequently, directed the petitioner to approach the revisional authority. The petitioner approached the revisional authority, but the revisional authority dismissed the petition as being barred by limitation. The Tribunal did not exclude the period spent before the Tribunal by considering Section 14 of the Limitation Act, which applies to proceedings under the Central Excise Act, 1944 (for short ''1944 Act''). Counsel for the petitioner relies upon a judgment of this Court in CWP No. 27647 of 2013 Sonia Overseas Pvt. Ltd. Vs. Union of India and Others, , in support of his argument.

2. Counsel for the Revenue is not in a position to raise any meaningful argument against the applicability of the Section 14 of the Limitation Act to proceedings

under 1944 Act or against correctness of the aforesaid judgment, but prays that the matter regarding condonation of delay may be left open to be finally decided by the revisional authority.

3. We have heard counsel for the parties and perused the impugned order.

4. A perusal of the impugned order reveals that the petition filed by the petitioner was dismissed as barred by limitation. The petitioner specifically urged before the revisional authority that the period spent before the Tribunal be excluded but the contention was rejected without considering the import or applicability of Section 14 of the Limitation Act. The question whether Section 14 applies to the case in hand is, in our considered opinion, is covered in favour of the petitioner by a judgment of this Court in M/s. Sonia Overseas Pvt. Ltd.''s case (supra), wherein while considering the applicability of Section 14 of the Limitation Act to proceedings under the Customs Act, 1962, it was held as under; -

"23. For the foregoing reasons, we are of the view that Section 14 of the 1963 Act is applicable to the proceedings under the 1962 Act in respect of an appeal provided under Section 128 and the time spent in the High Court in the abortive attempt to invoke its jurisdiction under Articles 226/227 of the Constitution will have to be excluded. After excluding the time in pursuing the litigation, the appeal filed before the Commissioner (Appeals) would be within the period of limitation. The bona fides of the petitioner m pursuing the remedy under Articles 226/227 of the Constitution was never in dispute. Accordingly, the writ petition is allowed and the impugned order dated 27-11-2013, (Annexure P-14) is set aside. The matter is remitted to the appellate authority who shall proceed to decide the appeal on merits in accordance with law."

5. We have no hesitation in holding that the ratio in M/s. Sonia Overseas Pvt. Ltd.''s case (supra) applies to the present case and, therefore, before dismissing the petition as barred by time, the revisional authority was required to consider the applicability of Section 14 of the Limitation Act and consequently, the period spent before the Tribunal. The petitions are, therefore, allowed, the impugned orders are set aside and the matter is restored to the Joint Secretary (Revision), Government of India (Revisional Authority) for deciding the application for condonation of delay as well as the appeal in accordance with law. Parties are directed to appear before the Joint Secretary (Revision), Government of India (Revisional Authority) on 2-2-2015.