

(2013) 03 GUJ CK 0033
In the Gujarat High Court

Case No : Special Civil Application No's. 14936, 14937 and 14938 of 2012

Ravi Pharmaceuticals (P.) Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 40 STT 285

Hon'ble Judges : S.G. Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Hasit Dilip Dave, for the Appellant; Gaurang H. Bhatt, for the Respondent

Final Decision : Disposed Off

Judgement

Akil Kureshi, J.—Heard learned counsel for the parties for final disposal of the petitions. For the purpose of this order, we may record facts arising in Special Civil Application No. 14936 of 2012. Petitioner has challenged an order-in-original dated 30-9-2010 passed by the Assistant Commissioner of Central Excise, Customs & Service Tax. Petition arises in following background:

1.1 Petitioner is a manufacturer of pharmaceutical drugs. Petitioner's factory is located in GIDC, Kansari, Anand, Petitioner, in addition to manufacturing such drugs, under its own license, also carries out manufacturing activities on loan license basis. The issue of (sic: exercisability), in the present case, arises in two angles. The clearances made by the petitioner of the drugs manufactured on loan licenses should also be clubbed with his own clearances for ascertaining the limit for the purpose of small scale industry exemptions. Second issue pertains to the question whether the unit of the petitioner can be stated to be located in a rural area, industry of the petitioner is being located in GIDC estate, the unit would not be covered under the expression rural area.

1.2 On both issues, the Adjudicating Authority held against the petitioner. Such

order was passed on 30-9-2010. Copy thereof was made available to the petitioner some time thereafter. Case of the petitioner is that, such copy was, however, lost in the office and that, therefore, the petitioner had to obtain a fresh certified copy, which was received only on 7-4-2011. Petitioner, thereupon preferred appeal in the month of 18-4-2011. Such appeal was dismissed by the Appellate Commissioner on the ground that he did not have jurisdiction to extend limitation beyond a maximum period of 30 days after expiry of limitation. Against such order of Appellate Commissioner, petitioner preferred further appeal before the Tribunal. The Tribunal also dismissed the petitioner's appeal on similar grounds by order dated 2-7-2012. The petitioner thereupon filed the present petition.

2. Initially though the petitioner had challenged the order of the Tribunal confirming order of the Commissioner, realizing that statutory provisions contained in Central Excise Act, 1994, do not permit the Appellate Commissioner to extend limitation beyond a maximum period of 30 days, the petitioner has, before us, challenged very order-in-original questioning the very basis for passing such an order.

3. We are conscious that when the Legislature provides for a period of limitation and also further provides that, delay, if any, can be condoned only up to a certain period and not beyond, the Commissioner in not entertaining the petitioner's appeal, committed no error. Counsel further pointed out that the petitioner had, all along, filed appeals against orders passed before and after the order-in-original impugned in this petition. It was simply because due to some lapse, copy of this order should not be traced. Therefore, appeal could not be presented. In that view of the matter, even in exercise of writ jurisdiction under Article 226 of the Constitution, we would not be justified in directing the Commissioner to do otherwise. Therefore, at the petitioners challenge confining to the Commissioner's view of not entertaining the appeal on merits, sic: we would have summarily dismissed the petition. However, in the present case, the petitioner has attacked the very original order and invoked our writ jurisdiction in the process.

4. In the decision of this Court in case of D.R. Industries Ltd. and Another Vs. Union of India (UOI) and Others, , Division Bench of this Court held that:

19. As regards the contention that there may be extraordinary cases where assessee may not be in a position to challenge the order of the Adjudicating Authority before the Commissioner (Appeals) within a period of 90 days from the date of communication of the order, we are of the view that in such extraordinary cases where an assessee can show extra ordinary circumstances explaining the delay and also gross injustice done by the Adjudicating Authority, the assessee may invoke the writ jurisdiction of this Court. Hence, in cases where the assessee has suffered gross injustice and they could not file appeals before the Commissioner (Appeals) within a period of 90 days from the date of communication of the order-in-original on account of circumstances beyond their

control, such assesseees can invoke the powers of this Court under Article 226 of the Constitution but, of course, not as a matter of right.

5. In the present case, we find that the petitioner had shown sufficient cause for not being able to prefer appeal within the time permitted. It is a case where, if the petition is not entertained, great injustice would cause to the petitioner. In case of the petitioner, the issues are covered in favour of the petitioner by virtue of decision of Appellate Commissioner and Tribunal. Such decisions were not taken into consideration by the Adjudicating Authority. Petitioner had paid duty on clearances made of the goods manufactured on loan licenses. Such duty is not given credit towards the departmental dues raised by the authorities. Under the circumstances, we are of the opinion that the issues are required to be placed back before the Adjudicating Authority who may dispose of the same in accordance with law, after giving an opportunity to the petitioner to place all the materials on record. For such purpose, order-in-original is quashed. Same shall be disposed of afresh after giving hearing to the petitioner. Petition is disposed of accordingly.