(2012) 04 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition No. 10102 of 2011

Union of India APPELLANT

Vs

EPCOS India Pvt. Ltd. RESPONDENT

Date of Decision : 25-04-2012

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35EE, 35EE(2)
Limitation Act, 1963 — Section 14

Citation : (2013) 290 ELT 364

Hon'ble Judges : R.D. Dhanuka, J;D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Pradeep S. Jetly and Jitendra B. Mishra, for the Appellant; Prakash Shah and Jas Sanghavi, instructed by . PDS Legal, for the Respondent

Final Decision : Allowed

Judgement

1. Rule; with the consent of Counsel for the parties made returnable forthwith. With the consent of the Counsel and at their request, the petition is taken up for hearing and final disposal. The first respondent filed a rebate claim which was rejected by the Adjudicating Authority on 29 January, 2008. The order of the Adjudicating Authority was challenged before the Commissioner (Appeals), who allowed the appeal on 7 March, 2008. On 16 May, 2008 the Revenue filed an appeal before the CESTAT The Tribunal by its Order dated 12 August, 2008 held that the appeal was not maintainable and directed its Registry to return the papers for presentation before the appropriate Forum. The Revenue filed a revision on 22 October, 2008. On 23 November, 2010 the Revisional Authority dismissed the revision on the ground that it was barred by limitation.

2. We find merit in the contention of the petitioner that the period spent in prosecuting the proceedings bona fide before the CESTAT, which had no jurisdiction, would have to be excluded by giving the benefit of the provisions of Section 14 of the Limitation Act, 1963. The provisions of Section 14 of the Limitation Act would be attracted in view of the judgment of this Court in

Rajkumar Shivhare Vs. Union of India, . The period for filing a revision u/s 35EE(2) of the Central Excise Act, 1944 is three months. However, the Central Government, if the applicant was prevented by sufficient cause from presenting the application within three months may allow the application to be presented within a further period of three months, There is no dispute about the position that if the period which was spent in prosecuting the proceedings before the Tribunal, is excluded, the revision which was filed before revisional authority would be within the stipulated period under sub-section (2) of Section 35EE.

3. For the aforesaid reasons, we allow the petition by setting aside the impugned order of the Revisional Authority dated 23 November, 2010. In consequence, we restore Revision F. No. 198/185/08-RA-CX to the file of the Revisional Authority in the Government of India, Ministry of Finance (Department of Revenue) for disposal on merits in accordance with law. The Revisional Authority shall dispose of the appeal preferably within a period of three months from the date on which a certified copy of this order is placed on its record.

4. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.