(1983) 10 BOM CK 0044

In the Bombay High Court

Case No : Appeal No. 753 of 1983 in Miscellaneous Petition No. 945 of 1983

Union of India (UOI) and Others — APPELLANT

Vs

Western Rolling Mills Ltd. and Another — RESPONDENT

Date of Decision : 11-10-1983

Acts Referred:

Citation : (1990) 26 ECR 585

Hon'ble Judges : Mehta, J;Kania, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kania, J.—The only contention raised by Mr. Lokur before us is that the claim for refund was in respect of a period more than three years prior to the date of the filing of the Writ Petition and hence no refund should have been granted in the Writ Petition as was done by the impugned judgment of Bharucha J. dated 13th October, 1982. It was contended by him that the petition ought to have been dismissed on the ground of gross delay on the part of the Petitioners. The relevant period to which the claim relates is from 23.3.1971 to 26.2.1973. An application for refund was made by the Respondents (Original Petitioners) on 4th October, 1974. That claim was rejected on 31st January 1975. Thereafter, Respondents went in appeal and later in revision and the revision application was decided by the Customs Authorities against the Respondents on 29th November 1978. This petition was filed on 29th March 1979. It is curious that although this was the only point urged in the appeal, this point was not even taken in the trial Court nor is there any averment in the affidavit in reply to the effect that the petition ought to have been rejected on the ground of delay. We should have expected that, if the Appellants were serious about pressing of this point, they should have, at least. bothered to take it up in the affidavit in reply or at least in the course of arguments in trial Court. It has been pointed out by Madan J. (as he then was) in the case of The Svadeshi Mills Company Limited v. Union of India and Ors. 1982 ECR 165 (Bom) that:

The Limitation Act, 1963, does not directly apply to Writ Petitions and each case has to be judged on its own merits. Though the Limitation Act, 1963 does not directly apply to Writ Petitions, the Court might refuse to exercise its discretion in favour of the Petitioner, if the petition is filed after the expiry of the limitation period. Equally, the Court can in a fit case grant relief even though the petition is filed after the expiry of the period of limitation for a suit.

In this connection, Madan J. has cited the following observations of Hidayatullah C.J. in Tilokchand Motichand and Ors. v. H.B. Munshi, Commissioner of Sales Tax, Bombay and Anr. AIR 1970 S.C. 893 :

The question is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit. A case may be brought within Limitation Act by reason of some Article but this Court need not necessarily give the total time to the litigant to move this Court under Article 32.

From this decision of Madan J. there was an appeal preferred by the Union of India and others, being Appeal No. 517 of 1982 which was summarily dismissed on 13.12.1982 We find that the position in the case before us is substantially similar to the case of Svadeshi Mills Co Ltd.

2. In view of this, appeal is summarily dismissed.