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IA No. GA 1 of 2018
GA No. 2190 of 2018
CEXA No. 83 of 2018
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CENTRAL EXCISE)
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

M/s. Bindawala Cables And Conductors Ltd.
Versus
The Commissioner of Central Excise, Kolkata – IV Comm. & Anr.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice MD. NIZAMUDDIN
Date: 5th January 2021

Appearance:
Mr. R. K. Choudhury, Advocate
for the appellant

Mr. Somnath Ganguli, Advocate
Mr. B. P. Banerjee, Advocate
for the respondents

The Court: This appeal was admitted on 23rd August 2018 to be heard on the following questions of law:

I. Whether the learned tribunal was justified in modifying the order in appeal dated 12th June 2017 passed by the Commissioner of Central Excise (Appeals – II), Kolkata without deciding the question of limitation set up in appeal by the appellant before the Commissioner of Central Excise (Appeals – II) on the ground that no extended period of limitation will be available in the present case where the show cause notice dated 16th September 2015 was issued merely on audit objection without any full fledged independent enquiry invoking extended period of limitation?

II. Whether the order of the learned tribunal reversing the factual finding of the Commissioner (Appeals) and proceeding to impose penalty on M/s. Bindawala Cables and Conductors Limited and Bindalawa Electricals Industries Limited amounted to reopening facts without any basis, and did not consider whether the applicant had be necessary *mens rea* for imposition of penalty, was perverse and ought to be set aside?

To put it simply there were only two questions before us. First, whether the revenue was entitled to issue the show cause notice and proceed with the adjudication on an extended period of limitation? Secondly, if the first issue was answered in favour of the revenue could the imposition of penalty on the assessee be justified?

On perusal of the impugned order of the tribunal we find that on both the issues, conclusions have been drawn by the tribunal against the assessee without adequate reason. For example, a hasty conclusion is reached as follows:

> "… The Commissioner (Appeals) proceeded on the basis that the assessee reversed the credit before the issuance of the Show Cause Notice and therefore there was no mala fide intent on the part of the assessee. I am unable to accept such findings of the Commissioner (Appeals). … Apparently, fact of reversal of credit is linked with non-receipt of the inputs and no other conclusion can be drawn. …"

There is no finding giving particulars of fraud, misrepresentation or suppression of facts, so as to justify the extended period of limitation.

There is also no reason available in the impugned order for imposition of penalty.

We are of the opinion that this appeal should be heard threadbare by the tribunal de novo.

We set aside the impugned order dated 12th June 2018 and remand the appeal to the tribunal with a direction to rehear and redetermine the same within a period of six months from date by a reasoned order after giving an opportunity of hearing to the parties.

This appeal (CEXA 83 of 2018) and the connected application (GA 2190 of 2018) are accordingly disposed of.

(I. P. MUKERJI, J.)

(MD. NIZAMUDDIN, J.)

R. Bose