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WPA 23991 of 2019
With
WPA 23992 of 2019

Nipha Enterprises LLP & Anr.
Vs
Additional Secretary to Government of India, Ministry of Finance (Department of Revenue) & Ors.

Mr. Anil Kumar Dugar,
Mr. Rajarshi Chatterjee,
Mr. Gobinda Dey
... For the Petitioners.
Mr. K.K. Maiti
... For the Respondents.

Heard learned Advocates appearing for the parties.

By these writ petitions, petitioners have challenged the impugned order dated 26th August, 2019 passed by the respondent, Additional Secretary to the Government of India on the revisional application filed by the petitioners under Section 35EE of Central Excise Act, 1944 allowing the said revisional application by a detailed reasoning which I have perused and found that there is no procedural illegality or irregularity and there is no violation of any principle of natural justice in passing the aforesaid impugned order. The issue arises in these writ petitions from the order of rejection of petitioners' claim for rebate under paragraphs 2.4 of Chapter IX of CBECs manual of supplementary instruction, which was rejected by the Adjudicating Authority on the ground of delay in filing the said claim after expiry of one year. It is the contention of the petitioners that the documents required for making application for rebate claim was not supplied to it for the fault of the department and the period of limitation should be counted from the date when the necessary documents were supplied by the department concerned even if it is after expiry of one year. Petitioners could not show any specific provision of law, which gives it legal right to make application for claiming rebate even after expiry of one year or any provision of law to show that the authorities concerned are empowered or authorised to extend the period of limitation. Petitioners in support of its contention have relied on the following judgments: -

1) Cosmonaut Chemicals vs. Union of India reported in (2008) 2008 taxmann. Com. 1346(Guj);
2) Gravita India Limited vs. Union of India reported in (2016)69 taxmann. Com 195 (Raj.);
3) JSL Lifestyle Limited vs. Union of India reported in (2015) 62 txmann. Com 46(P & H);
4) Deputy Commissioner of Central Excise Chenai-IV Commissionerate vs. Dorcas Makers Private Limited reported in (2015) 56 taxmann. Com 401(Mad.)

Mr. Maiti, learned Advocate appearing for the respondents in opposing the writ petitions justifies the impugned order of the Revisional Authority and submits that the same is in accordance with law and not in contrary to any provision of law. Mr. Maiti in support of his contention relies on a decision of Hon'ble Delhi High Court in the case of Orient Micro Abrasives Ltd. vs. Union of India reported in 2020(371) E.L.T. 380(Del.) particularly paragraphs 11 and 16 of the said judgement, which are quoted as hereunder:

"11. Mr. Karan Sachdev, Learned Counsel appearing for the petitioner, has, basically, urged two grounds, in support of the writ petition. Firstly, Mr. Sachdev submits that, owing to the technical fault at the end of the respondent, because of which the EP copies of the shipping bills could not be made available to the petitioner in time, the petitioner could not be made to suffer prejudice. He relies, for this submission, on the judgment of the High Court of Gujarat in Cosmonaut Chemicals v. Union of India (2009 (233) E.L.T. 46(Guj.), as well as of the High Court of Rajasthan in Gravita India Ltd. v. Union of India(2016(334) E.L.T. 321(Raj.).

16. We also record our respectful disagreement with the view expressed by the High Court of Gujarat in Cosmonaut Chemicals (2009(233) E.L.T. 46(Guj.) and the High Court of Rajasthan in Gravita India Ltd. (2016(334) E.L.T. 321(Raj.) to the effect that, where there was a delay in obtaining the EP copy of the Shipping Bill, the period of one year, stipulated in Section 11B of the Act should be reckoned from the date when the EP copy of the Shipping Bill became available. This, in our view, amounts to rewriting of Explanation (B) of Section 11B of the Act, which, in our view, is not permissible."

Considering the facts and circumstances of the case as appears from record, submission of the parties and judgments relied upon and fully agreeing with the view taken by the Hon'ble Delhi High Court in the case of Orient Micro Abrasives Ltd. (supra), these writ petitions being WPA 23991 of 2019 and WPA 23992 of 2019 are dismissed with no order as to costs.

(Md. Nizamuddin, J.)