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CEXA/26/2021
IA No.GA/1/2021
IA No.GA/2/2021

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Central Excise)
ORIGINAL SIDE

COMMISSIONER OF CENTRAL EXCISE, BOLPUR

-Versus-

M/S. CHITTARANJAN LOCOMOTIVE WORKS

Appearance:
Mr. Somnath Ganguly, Adv.
Ms. Aishwarya Rajyashree, Adv.
...for the appellant.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 12th April, 2022.

The Court : We have heard Mr. Somnath Ganguly, learned standing counsel for the appellant/revenue assisted by Ms. Aishwarya Rajyashree, learned advocate.

The respondents have been served and affidavit of service has been filed. None appears for the respondents.

On perusal of the affidavit filed in support of the application for condonation of delay, we find that there is no explanation much less sufficient cause shown for condonation of the inordinate delay of 832 days. Nevertheless we have heard Mr. Ganguly, learned counsel for the appellant on the merits of the matter as well. Therefore, we are inclined to dispose of the main appeal and we exercise discretion and condone the delay in filing the appeal. Accordingly, the delay in filing the appeal is condoned and the application for condonation of delay (IA No.GA/1/2021) is allowed.

Re: CEXA/26/2021:

This appeal filed by the revenue under Section 35G of the Central Excise Act, 1954 (the 'Act' in brevity) challenging the order passed by Customs Excise & Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata in appeal No.E/226/2009 dated 10th January, 2019.

The revenue has suggested the following substantial questions of law for consideration:

"a) *Whether the assessee/respondent herein, being a unit of 11A of the Central Railways, is excluded from the purview of Section 11A of the Central Excise Act, 1944 ?*

b) Whether the Learned Tribunal has rightly applied the decision of the Hon'ble Supreme Court as held in the case of Nizam Sugar Factory reported in 2006 (197) ELT 456 (SC) in the instant case ?"

We have heard Mr. Somnath Ganguly, learned standing counsel for the appellant/revenue.

The short issue which falls for consideration is whether the appellant/revenue could have invoked the extended period of limitation under Section 11A of the Central Excise Act, 1944 and denying the benefit of the notification bearing No.67/86-CE dated 10th February, 1986 which allowed the exemption for parts of electric motors, if such parts were used in the factory for manufacture of electric motors using such component parts. The respondent/assessee is a wholly owned Central Government undertaking functioning under the aegis of the Ministry of Railways engaged in manufacturing of railways locomotives as well as parts required for use in such locomotives. The respondent/assessee, before the tribunal contended that the parts of electric motors manufactured were cleared to various zones of the railways. No sale was involved in such transfer of goods and the use of the motors are to be considered as captive consumption and they should be extended the benefit of the exemption under the notification No.67/86-CE. Further, it was contended that there can be no allegation of suppression against the respondent/assessee which is an unit of Ministry of Railways and the appellant/department has failed to produce any evidence to substantiate the claim that goods have been cleared clandestinely without payment of duty. The revenue reiterated the finding rendered by the authorities and contended that the benefit of the notification No.67/86-CE cannot be extended to the respondent/assessee. The tribunal while examining the facts, in our opinion, has rightly found that the extended period of limitation for issuance of show cause notice under Section 11A of the Act could not have been invoked. Furthermore, the tribunal, on facts, noted that there was no allegation of any suppression made by the respondent/assessee with the intention to avoid payment of duty. Therefore, the tribunal, taking note of the decision of the Hon’ble Supreme

Court in *Nizam Sugar Factory* reported in 2006 (197) ELT 456 (SC) held that the show cause notice could not have been issued by invoking the extended period of limitation.

We fully agree with the findings recorded by the tribunal, more particularly, when there is no allegation brought on record by the appellant/revenue with regard to the alleged suppression with the intent to avoid payment of excise duty. Thus, the order passed by the tribunal does not call for any interference. Accordingly, the appeal (CEXA/26/2021) is dismissed and the substantial questions of law are answered against the revenue.

In the result, the connected application for stay IA No.GA/2/2021 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/As.