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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CENTRAL EXCISE)
ORIGINAL SIDE

CEXA/15/2022
IA NO. GA/1/2022; GA/2/2022
COMMISSIONER OF CENTRAL EXCISE, BOLPUR COMMISSIONERATE
Versus
M/s. SAIL

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK

Date : 28th July, 2022

Appearance :
Mr. Bhaskar Prosad Banerjee, Adv.
Ms. Manashi Mukherjee, Adv.
….for Appellant

Dr. Samir Chakraborty, Adv.
Mr. Abhijit Biswas, Adv.
Mr. Bhaskar Senupta, Adv.
…for Respondent

The Court :- We have heard Mr. Bhaskar Prosad Banerjee, learned standing Counsel along with Ms. Manashi Mukherjee, learned Advocate appearing for the appellant and Dr. Samir Chakraborty, learned Senior Counsel appearing for the respondent.

There is a delay of 1082 days in filing the appeal. Though we are not fully satisfied with the reasons given in the affidavit filed in support of the condone delay petition, since we find that the tax effect in the appeal is less than the threshold limit, we exercise discretion and condone the delay in filing the appeal. The application for condonation of delay is allowed.

CEXA/15/2022

This appeal by the revenue filed under Section 35C of the Central Excise Act, 1944 is directed against the order dated 17th December, 2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata (Tribunal) in order No. FO/77107/2018.

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

i) Whether the Learned Tribunal erred in fact and law and has come to a perverse finding since as per stock taking report for 2005-06 (as on 31.03.2006), 3003 MT of Pig Iron out of total production of 26189 MT was recorded short and the percentage of such shortage comes to 11.47% which is beyond the condonable limit of 2% as per Ministry of Finance Circular No. 52/79-CX 6 dated 26.10.1979, which has not been challenged by the respondent and huge shortage of excisable goods has been beyond the maximum condonable limit of 2% which was neither entered in the excise records nor duty was paid on that count not informed to the authorities nor any investigation report was made available ?

ii) Whether the Learned Tribunal erred in fact and law and has come to a perverse finding that the assessee have not issued invoices against the said goods and have neither reflected such shortages in the monthly return in Form ER-1 nor submitted any information to that effect to the concerned range officer with the intent to evade payment of Central excise duty by suppressing such material fact before the department attracting 1st proviso to Section 11A of the said Act?

iii) Whether the Learned Tribunal has erred in law by not appreciating that the instant case of evasion of duty certainly attracts equal penalty and appropriate rate of interest under the provision of Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1944 and the assessee cannot escape from penal provision of law ?

We have heard Mr. Bhaskar Prosad Banerjee, learned standing Counsel along with Ms. Manashi Mukherjee, learned Advocate appearing for the appellant and Dr. Samir Chakraborty, learned Senior Counsel appearing for the respondent.

On perusal of the material papers, more particularly the order in original dated 30th July, 2007, we find that the Central Excise Duty demanded from the respondent is Rs.55,06,320.00. If that be the case, the revenue cannot pursue the appeal on the ground of low tax effect.

For such reason, the appeal stands disposed of on the ground of low tax effect.

Consequently, the substantial questions of law are left open.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

SN/GH