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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [CENTRAL EXCISE]
ORIGINAL SIDE

CEXA/8/2001

COMMISSIONER OF CENTRAL EXCISE, CALCUTTA-I, COMMISSIONERATE
VS.
BENGAL STEEL INDUSTRIES

BEFORE :
THE HON'BLE T.S. SIVAGNANAM ACTING CHIEF JUSTICE
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 3rd May, 2023.

Appearance :
Mr. Vipul Kundalia, Adv.
Ms. Aishwarya Rajashree, Adv.
...for appellant
Mr. Arijit Cakrabarti, Adv.
...for respondent

The Court:- This appeal filed by the revenue under Section 35H of the Central Excise Act, 1944 [the Act] is directed against the order dated 28th September, 2000 passed by the learned Customs, Excise and Gold [Control] Appellate Tribunal, East Zonal Bench, Calcutta. The Tribunal referred the matter to this Court to decide the question whether the quantum was justified in allowing appeal without ascertaining the factual position for actual utilisation of input appropriate to be charged to the electric induction furnace."

Heard learned counsel on either side.

The Tribunal, in our opinion, has examined the factual position in a detailed manner and moved on to consider as to whether the demand was barred by limitation. The show cause notice alleging wrongful abatement of MODVAT credit was issued on 3.4.1995 for the period from 1.3.1990 to 31.3.1994 on the ground that MODVAT credit was availed in an inappropriate manner. The appellant contended that the credit was availed after filing proper declaration and after producing materials before the department which was received by the department in RS-30A part I, as well as in part II. That apart the RT-12, the returns were regularly filed by the assessee along with the document to establish the duty paid and on the said, basis credit was availed by them. Further, the assessee contended that the documents which were produced by them were defaced by the Central Excise Authority and no objection whatsoever was raised by the department with regard to the veracity of this document. The RT returns were thus finally assessed. That apart, the assessee contended that the Central Excise Officers visited the assessee's factory regularly and examined their statutory records as well as the materials received by them as also the final products manufactured and nothing contrary was pointed out by the team of officers who visited the assessee's factory. Furthermore, the assessee placed on record that the annual stock taking verification has also been done in presence of the Central Excise Officers wherein the stock and the re-melting stock and also other inputs lying in the factory were verified and no objection was raised by the officers. Therefore, the assessee would contend that the revenue was justified in issuing the demand beyond the period of limitation and in the absence of any suppression, the extended period of limitation could not have been invoked by the revenue. The Tribunal after noting the facts examined as to the correctness of the stand taken by the assessee before it and it was pointed out that in the order passed by the Commissioner of Central Excise, Calcutta-I, it has been observed that defacing the document does not mean that the concerned officer has verified the document and the main purpose of defacing is to prevent the same document for being used for availament of MODVAT credit. Thereafter, the Tribunal examined the purpose for which defacing of document is done and pointed out that it is an empty formality to be done by Central Excise Officers having jurisdiction over the assessee. More particularly, at the time of defacement the genuineness of the duty paying document is examined by the authorities and it is only thereafter the document is defaced. The revenue did not dispute the fact that the assessee had produced the document for defacement purpose and there was no allegation that the assessee suppressed the material from the revenue or made any misstatement of facts. Furthermore, the Tribunal noted that it is not in dispute that RT-12 returns were finally approved by the authorities. The importance of final assessment of RT 12 returns were considered by the Tribunal and it was held that the final assessment has been done after verifying the particulars as well as the returns and the duty paid documents which were attached to the returns and only after a thorough examination defacement has taken place. The Tribunal while considering as to under what circumstances the extended period of limitation wold be invoked and rightly took note of the legal position that the department should establish that the assessee has availed MODVAT credit by willfully misstating certain facts or suppressed material facts and those acts are required to be deliberate acts with an intent to withhold information from the department. After noting the legal requirement the Tribunal examined the factual position and pointed out that there is no allegation of misstatement or suppression made by the department at any stage of the proceedings. More particularly when all the documents were produced by the assessee examined by the revenue and thereafter the final assessment was made. Therefore, the Tribunal held that extended period of limitation could not have been invoked by the revenue and that the entire demand is barred by limitation. The Tribunal was of the view that while referring the matter to this Court referred the question as to whether Tribunal was justified in allowing the appeal without ascertaining factual position of actual utilisation. The question of limitation is a legal issue, which is required to be decided taking note of the relevant facts. If on facts, the Tribunal had come to the conclusion that the demand was barred by limitation nothing prevented the Tribunal from granting relief to the assessee on the said ground and there would be no occasion to examine the merits of the matter as such the exercise will be a sheer academic exercise. Thus, we are of the view that Tribunal rightly took note of the undisputed fact that held that extended period of limitation could not be invoked.

For the above reasons, we find no ground to interfere with the order passed by the Tribunal.

Accordingly, the appeal is dismissed.

The question referred for consideration is answered against the revenue.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE)

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.