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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CEXA/43/2009
IA NO.GA/1/2009 (Old No.GA/1741/2009)

M/S. CARTER HYDROLIC POWER PVT. LTD.
-Versus-
UNION OF INDIA & ORS.

BEFORE:
The Hon'ble T.S. SIVAGNANAM, ACTING CHIEF JUSTICE
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 3rd May, 2023.

The Court : This appeal by the assessee under Section 35G of the Central Excise Act, 1944 is directed against passed by the Customs, Excise & Service Appellate Tribunal, East Regional Bench, Kolkata in SP 267 of 2008 dated 12th June, 2008. The appeal was admitted on 2nd September, 2009 on the following substantial question of law :

> *"Whether the tribunal substantially erred in law in confirming the penalty under Section 11AC of the Central Excise Act, 1944 without considering the applicability of the provisions of the said section inasmuch as demand was made on the basis of the return submitted by the*

assessee and within normal period of time and, therefore, the provisions of the said section had no application in the facts and circumstances of this case?”

The issue involved in this appeal is whether the Tribunal was right in affirming the order passed by the authorities levying penalty apart from demanding duty. The contention of the appellant before the Tribunal was that the delay in payment on account of financial difficulties and prayed for waiver of the penalty altogether. The learned Tribunal rightly noted that the decision of the Hon’ble Supreme Court in Union of India Vs. Dharmendra Textiles Processors, reported in 2008(231) ELT 3 (SC) and dismissed the appeal. We find no error in the order passed by the learned Tribunal.

Accordingly, the appeal fails and the same stands dismissed. The substantial question of law is answered against the assessee.

The connected application (GA/1/2009) stands closed.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das/