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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Central Excise]

ORIGINAL SIDE

CEXA/6/2010
COMMISSIONER OF CENTRAL EXCISE,
KOLKATA - IV, COMMISSIONERAT
VS
M/S. DANKUNI COAL COMPLEX

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 27th June, 2024

Appearance :
Sri U.S. Bhattacharya, Adv.
Sri Tapan Bhanja, Adv.
..for the appellant.

1. Heard Sri U.S. Bhattacharya, learned senior standing counsel assisted by Sri Tapan Bhanja, learned junior standing counsel for the appellant.

2. This appeal was admitted by order dated 19.5.2010 on the following substantial questions of law :

"*(a) Whether the Learned Tribunal was wrong in holding Section 11A was required and the same having been issued after the period of limitation the claim was time barred. ?*

(b) Whether the learned Tribunal ought to have held that the extended period of five years in issuing the show cause notice as per the proviso to Section 11A(1) of the Central Excise Act, 1944 would be available to the appellant in the instant case ?"

3. We find that on the question of limitation the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata has recorded the following the following finding on fact in the impugned order dated 13.10.2009 :

"5. …. We find that the appellants filed classification list in the year 1993 which was duly approved by the proper officer showing manufacture of coal gas and liability to pay excise duty at nil rate of duty. Thereafter, the appellants also filed classification list in March, 1997. In the circumstances, we find merit in the contention of the appellants that the demand is time barred. Therefore, without going into the merits, we allow the appeal on the issue of time bar and set aside the demand and penalty. The appeal is allowed as indicated above."

4. We do not find any perversity in the finding of fact recoded by the Tribunal as afore-quoted.
5. In view of the aforesaid, the appeal is dismissed and the substantial questions of law are answered in favour of the assessee and against the department.
6. All pending applications, if any, stand disposed of.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

Sd/