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

ORIGINAL SIDE

CEXA/67/2018
IA NO.GA/1/2018 (Old No.GA/1393/2018), GA/2/2018 (Old No.GA/1395/2018)

COMMISSIONER OF CENTRAL EXCISE, KOLKATA II COMMISSIONERATE
VS
M/S. TIDE WATER OIL CO. (INDIA) LTD.

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 18th April, 2024

Appearance :
Sri Uday Shankar Bhattacharya, Adv.
Sri K.K. Maity, Adv.
Sri Tapan Bhanja, Adv.
..for the appellant.

1. Heard Sri Uday Shankar Bhattacharya, learned senior standing counsel counsel for the appellant.

2. This appeal has been filed beyond limitation by 73 days.

3. The impugned order of the Tribunal passed in Appeal No.FO/77400/2017 dated 4.8.2017 reads as under :

> *"1. It is seen from the order of the Commissioner (Appeals) that the appellant due to mistake, short paid an amount of Rs.10,155/- for the month of April, 2005 which was subsequently paid in cash on 30.06.2005 alongwith interest. In this context, the adjudicating authority had raised a demand of Rs.20,28,596/- alongwith interest and penalty of equal amount of duty for short payment of*

> *Rs.10,155/- in contravention of Rule 8(3) of the Central Excise Rules, 2002.*
>
> *2. Heard both sides and perused the appeal records.*
>
> *3. After considering the amount involved of Rs.10,155/- and the short payment due to mistake as held by the Commissioner (Appeals), the action on the part of the lower authorities is totally excessive. I find that the appellant paid the entire amount long before the issuance of the show cause notice. Taking into account, the overall facts and circumstances of the case, and the amount involved, the impugned orders are set aside. The appeal filed by the appellant is allowed."*

4. We find no infirmity in the impugned order of the Tribunal. That apart, the tax effect involved is much below the limit fixed for filing the appeal vide Circular No.F. No.390/Misc/30/2023-J issued by Ministry of Finance, Government of India.

5. In view of the aforesaid, after condoning the delay, the appeal is dismissed.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

Sd/