Commissionerate Vs. M/S Avery India Limited and ors

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SooperKanoon Citation : sooperkanoon.com/1058980

Court : Kolkata

Decided On : May-10-2013

Judge : Girish Chandra Gupta

Appellant : Commissionerate

Respondent : M/S Avery India Limited and ors

Judgement :

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ORDER
SHEET G.A.No.341 of 2013 G.A.No.342 of 2013 APO.T.No.33 of 2013 W.P.No.96 of 2006 IN THE HIGH COURT AT CALCUTTA Special Jurisdiction ORIGINAL SIDE COMMISSIONER OF CENTRAL EXCISE, KOLKATA-VI COMMISSIONERATE Versus M/S AVERY INDIA LIMITED & ORS BEFORE: The Hon'ble JUSTICE GIRISH CHANDRA GUPTA The Hon'ble JUSTICE TARUN KUMAR DAS Date :

10. h May, 2013.

Mr.R.Bharadwaj, Adv.with Mr.K.K.Maiti, Adv.for the Appellant Mr.N.K.Choudhury, Adv.for Respondents The Court : Delay is condoned and the appeal is taken up for hearing.

The subject matter of challenge is a judgment and order dated 3rd March, 2010 by which the learned Trial Court set aside the notice dated 27th March, 2002, primarily on the ground that the impugned notice in so far as the same relates to the financial years 1986 to 2001, has apparently been issued beyond the period of limitation of one year from the relevant date.

Even if there were any allegation of short levy or short payment by reason of fraud, collusion or misstatement or suppression of facts or contravention of any provisions of the Central Excise Act, 1944 or the Rules framed thereunder with intention to evade payment of duty, even then the notice would have to be served within five years from the relevant date.

No show cause notice could in any circumstances have been issued on 27th March, 2002 for any period prior to 27th March, 1997.

Mr.Choudhury, learned Advocate appearing for the assessee/ noticee submitted that no show cause notice could have been issued in the case of a provisional assessment.

He added that the allegation as regards fraud for the purpose of extension of the period of limitation is equally without any merit.

There can be no dispute that the notice was required to be issued within a year.

However, in the cases of fraud, collusion or any willful misstatement or suppression fact, the period is extendable to five yeaRs.That precisely is the reason why the learned Trial Court held that no show cause notice could have been issued on 27th March, 2002 for any period prior to 27th March, 1997.

Considering that it is only the issuance of the notice, which is under challenge, it would not be appropriate to express any opinion as to whether the notice is valid or invalid on merits.

The learned Trial Court set aside the notice, as already indicated, primarily on the ground of limitation.

We are of the opinion that the learned Trial Court should not have set aside the notice without giving liberty to the Revenue to issue a fresh show cause notice for the period commending from 27th March, 1997.

Accordingly, the appeal is partly allowed.

The order under challenge is varied to the extent that the Revenue shall be entitled to issue show cause notice for any period commencing from 27th March, 1997.

The appeal and the applications are all disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(GIRISH CHANDRA GUPTA, J.) (TARUN KUMAR DAS, J.) km AR(CR)