(1997) 08 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 2037 of 1987, decided on August 5, 1997

Graphite Vicarb India Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 05-08-1997

Acts Referred:

Citation : (1997) 72 ECR 806 : (1997) 96 ELT 25

Hon'ble Judges : T.K. Chandrashekhara Das, J;A.A. Desai, J

Bench : Division Bench

Advocate : Mr. R. D. Soni, instructed by Gagrat and Co, for the Appellant; Mr. H.V. Mehta, Mr. M.I. Sethana and Mr. V.G. Rege, instructed by S. K. Shetty, for the Respondent

Judgement

A.A. Desai, J.—The authority rejected the Application for the claim of refund, on the ground that the same was filed beyond the period of limitation. The learned Counsel for Petitioners made submission that though the duty was paid on 24-9-1983, final assessment was made on 27-2-1985 and as such, the application for refund dated 24-7-1985 is within the period of limitation. He placed reliance on Section 27, particularly Clause ''A'' and made a submission that date of final assessment would be the date for the purposes of computing period of limitation. The submission is erroneous as clause (a) of sub-section (1) of Section 27 is not available, since the payment of duty was not in pursuance of the final assessment, dated 27-2-1985. Undisputedly, the payment was made much earlier as on 24-9-1983. As such, the application was not within the period of limitation as envisaged by Section 27.

2. Even otherwise, the final assessment has not in any way indicated that the payment of duty in 1983 was either erroneous or in excess. One of the submission of the learned Counsel is that question can be gone into, while deciding the refund application, we are unable to agree.

3. Lastly, the learned Counsel for Petitioners urged that the explanation given u/s 27 was not available. Apart from the question, whether explanation was available

at the relevant time or not this explanation refers to adjustment of a duty after the final assessment thereof. As enumerated, even in final assessment, there was no excess or erroneous payment of duty as has been held by the Authority. As such, the provision has no application.

4. The Petition is without any merit and dismissed with no order as to costs.

