



Serial No.01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Central Excise Ap. No.1/2024

Date of Order: 24.10.2024

The Commissioner of Central Goods & Services Tax and Central Excise,
Shillong Commissionerate, Crescens Building, Mahatma Gandhi Road,
Shillong-793001. Appellant

Vs.

M/s Sriram Fasteners, 13th Mile, Tamulkuchi, Byrnihat, Ri-Bhoi District,
Meghalaya. Respondent

Coram:

Hon'ble Mr. Justice I.P. Mukerji, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Dr. N. Mozika, DSGI with
Ms. L.M.D. Marak, Adv

For the Respondent : Mr. N. Dasgupta, Adv

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

This is an appeal under Section 35G of the Central Excise Act, 1944.

It is at the admission stage after condonation of delay. The impugned order of the Customs, Excise and Service Tax Appellate



Tribunal (CESTAT) was made on 31st March, 2023 allowing the appeal of the respondent.

If vital or material evidence has not been considered by the adjudicating authority in passing an order, it suffers from a patent error of law on the face of it. Thus, a substantial question of law would arise for determination by the Court exercising supervisory jurisdiction. On going through the impugned order of the Tribunal, it appears that without material evidence to support such an order, it has set aside the order-in-original and the order passed by the Commissioner (Appeals), which have substantially based on factual findings.

The facts which were material before the Tribunal were drawn these:

- (a) whether the respondent was a new industrial unit?
- (b) whether it commenced production prior to 31st March, 2017?
- (c) whether in the alternative, the subject industrial unit has made expansion by at least 25 per cent and commenced production before 31st March, 2017? and
- (d) whether the respondent is entitled to the benefit of notification No.20/2007 dated 25th April, 2007 which allow exemption to a new unit for a period of ten years if it is new, located in the designated area and commenced production prior to 31st March, 2017?



The case of the Revenue is that the respondent is not at all a new industrial unit and is doing the same business as that of another organisation, Satyam Alloys from the latter's premises, only changing its name. The Revenue contends that the registration of the respondent was obtained on 31st March, 2017 which is also shown as the date of commencement of production. The respondent could not have commenced production prior to 31st March, 2017.

We are of the opinion that the Tribunal in setting aside the orders of two adjudicating authorities, i.e. the order-in-original and the order of the Commissioner (Appeals), did not address itself properly to the factual issues which needed a detailed and threadbare determination. Prima facie it has not considered some vital and material evidence and has acted upon irrelevant materials to hold in favour of the respondent.

We are sitting as the highest Appellate authority to interfere with the order of the Tribunal only if there is a substantial question of law involved. No doubt as stated above, a substantial question of law is involved. But it would be in the fitness of things if this factual determination is made by the learned Tribunal.

Making those observations, we set aside the impugned order of the Tribunal dated 31st March, 2023. We remand the entire matter to CESTAT to consider the case de novo upon hearing the parties and



decide the same by a reasoned order within three months from the date of communication of this order.

Central Excise Ap.No.1 of 2024 is disposed of as above.

(W. Diengdoh)
Judge

(I.P. Mukerji)
Chief Justice

