OD-39

ORDER SHEET
IA NO. GA/2/2020
(Old No: GA/31/2020)
CEXA/2/2020
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Central Excise)
ORIGINAL SIDE

COMMISSIONER OF CENTRAL EXCISE, HALDIA COMMISSIONERATE
Vs
M/S. MCC PTA INDIA CORPORATION PVT LTD AND ANR

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
And
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 13TH DECEMBER, 2021

Appearance:
Mr. Somnath Ganguly, Adv.
Mr. Bhaskar Prasad Banerjee, Adv.
...For the Appellant

Mr. Rahul Dhanuka, Adv.
...For the Respondent

The Court : This appeal by the revenue filed under Section 35(G) of the Central Excise Act, 1944 (the 'Act' for brevity) is directed against the order dated 28th March, 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata, Regional Bench, ('the Tribunal') in Final Order No. 75440-75441 of 2019.

The revenue has raised the following substantial questions of law for consideration :

i) Whether the order of the Learned Tribunal is perverse and contrary to law inasmuch as the records reveal that the

Respondents suppressed the material facts with the intent to evade payment of Central Excise Duty till it was detected by the Department Officer and as such, in the facts and circumstances of the case, extended period of limitation is very much applicable in the case of the goods ?

ii) Whether the Learned Tribunal is wrong in not appreciating that the Assessee/Respondent being manufacturer made undervaluation of excisable goods, by not including money-value of additional consideration obtained by way of Advance Licence from the buyers who are advance license holders and thereby contravened the provisions of Section 4 of the Central Excise Act, 1944 read with Rule 4,6,8,10,11,12 and 22 of the Central Excise Rules, 2001 and Central Excise Rules, 2002 ?

iii) Whether the Learned Tribunal failed to appreciate the law laid down by the Supreme Court in the case of Commissioner – vs- Reliance Industries Ltd. [2016(339) E.L.T. A142 (S.C)], Cosmic Dye Chemical –vs- Collector of Central Excise, [1995(75) E.L.T. 721] and Union of India –vs- Dharamendra Textile Processors [2008(231) E.L.T. 3(SC)] ?

Heard Mr. Somnath Ganguly, learned Standing Counsel appearing for the appellant/revenue and Mr. Rahul Dhanuka, learned Counsel appearing for the respondent/assessee.

Learned Counsel appearing for the respondent/assessee raised a preliminary objection as regards the maintainability of this appeal before this Court. It is contended that the questions of law which have been raised are directly relatable to the valuation of the goods and if such is the position then appeal will not be maintainable before this Court.

We have heard the learned Standing Counsel on the above submissions. On going through the materials placed and papers made available before this Court, we find that the core issue involved in this appeal pertains to valuation of the goods though the substantial questions of law as framed by the Department may give an impression that whether the tribunal could have deleted the payment of duty on the extended period of limitation, essentially the dispute is one of the valuation. Therefore, we sustain the preliminary objection raised by the learned Counsel appearing for the respondent/assessee and accordingly hold the appeal to be not maintainable.

Accordingly, the appeal is dismissed as not maintainable.

With the dismissal of the appeal, the application being GA/2/2020 (Old No:GA/31/2020) is also dismissed.

Liberty is granted to the appellant to prefer appeal before the appropriate forum.

The registry is directed to return the original certified copy of the order passed by the tribunal to the learned Counsel appearing for the appellant/revenue after retaining photostat copy of the same.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/S.De