OD-21

CEXA/8/2021
IA No.GA/2/2021

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction
ORIGINAL SIDE

COMMISSIONER OF CENTRAL EXCISE,
KOLKATA-III,

-Versus-

M/S. INDUSTRIAL PERFORATION (INDIA)
PRIVATE LIMITED

Appearance:
Mr. Somnath Ganguly, Adv.
Ms. Sukalpa Sil, Adv.
Ms. Sabnam Basu, Adv.
Ms. Priyambada Singh, Adv.
...for the appellant.

Mr. N. K. Chowdhury, Adv.
Mr. Nilotpal Chowdhury, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 2nd December, 2021.

The Court : This appeal of revenue filed under Section 35G of the Central Excise Act, 1944 (the 'Act' in brevity) is directed against the order passed by the Customs, Excise & Service Tax Appellate Tribunal (the 'Tribunal' in short) Eastern Zonal

Bench, Kolkata in Final Order No.76551/2019 dated 15th November, 2019.

We have heard Mr. Somnath Ganguly, learned counsel for the appellant and Mr. N. K. Chowdhury, learned counsel for the respondent.

The present appeal is not maintainable before this Court as the question raised before us pertains to the rate of duty which can be made applicable to the subject goods dealt with by the respondent/assessee. The Tribunal followed its earlier decision in the case of *Sarita Steels & Industries Ltd. vs. CCE Visakhapatnam* reported in 2011(264) ELT 313 (Tri-Bang) and the decision of the Delhi Tribunal in the case of *Paramount Communication Ltd. vs. CCE Jaipur,* reported in 2016(344) ELT 1091 (Tri-Del) and allowed the appeal. As against those decisions, the revenue has preferred appeal before the Hon’ble Supreme Court as the matter pertains to the rate of duty.

Therefore, we are of the view that this appeal cannot be entertained by this Court. Accordingly, the appeal stands disposed of by giving liberty to the appellant/revenue to prefer appeal as against the order passed by the Tribunal before the Hon’ble Supreme Court.

Registry is directed to return the original certified copy of the order passed by the Tribunal to the learned counsel appearing for the appellant after retaining a photostat copy thereof.

Consequently, the connected application for stay (GA/2/2021) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

pa/A/s.