OD-8

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Central Excise)
ORIGINAL SIDE

IA No.GA/2/2017 (Old No. GA/2800/2017)
In
CEXA 29 of 2017

COMMISSIONER OF CENTRAL EXCISE, KOLKATA IV, COMMISSIONERATE
Vs
AI CHAMPDANY INDUSTRIES LTD.

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 1st December, 2021.

Appearance:
Mr. Somnath Ganguli, Adv.
Mr. Bhaskar Prasad Banerjee, Adv.
...for the appellant.

Mr. Saurabh Bagaria, Adv.
Mr. Indranil Banerjee, Adv.
...for the respondent.

The Court : This appeal has been filed by the Revenue under Section 35B of the Central Excise Act, 1944 (the 'Act' in brevity) and is directed against the order dated 05.01.2017 passed by the learned Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata (the Tribunal) in Appeal No.E/263/2007-SM arising out of Order-in-Appeal No.139/Kol-IV/06 dated 28.12.2006 and Order-in-Original No.46 Joint Commr./C.EX/Kol-IV/Adjn/2006 dated 28.09.2006.

The appellant/Revenue has raised the following substantial questions of law for consideration :

a) Whether the Learned Tribunal erred in not considering that the impugned CBEC instruction dated 17.08.2011 provided that when there has been adverse judgment in respect where notification/instruction/circular or order has been challenged, the decision should be contested irrespective of the amount involved in the case and since the instant case relates to interpretation of the notification and its applicability thereof, the decision of the Learned Tribunal is erroneous in the facts of the case.

b) Whether the Learned Tribunal failed to appreciate the provisions of sub-section 4 of Section 3 of Jute Manufacturers Cess Act, 1983, which provides for applicability of Central Excise Act or Rules, in relation to levy or collection on duty of excise on jute manufacturers and Rule 21 of the Central Excise Rules, 2002, provides for remission by Commissioner in case of goods is lost or destroyed by natural causes and as such when the assessee was duty bound to file remission application before the Commissioner of Central Excise, in absence of not undertaking such an exercise, the Commissioner appeal cannot super impose its jurisdiction in holding that the demand is not justified and as such the Learned Tribunal was not correct in not deciding the matter on merits?

Heard Mr. Somnath Ganguli, learned standing counsel appearing for the appellant/Revenue and Mr. Saurabh Bagaria, learned counsel appearing for the respondent/assessee.

Learned standing counsel appearing for the appellant has produced before us the communication received from the department dated 26.09.2019 stating that this appeal may be withdrawn on the ground of low tax effect. The said communication is placed on record and the appeal stands dismissed as withdrawn on the ground of low tax effect. Consequently the substantial questions of law are left open.

The stay application being IA No.GA/2/2017 (Old No. GA/2800/2017 accordingly stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/pkd