O-153

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CEXA/1/2020
COMMISSIONER OF CGST AND CX. KOLKATA SOUTH COMMISSIONERATE
VS.
M/S. DAS BROTHERS & CO.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 26th September, 2022

<u>Appearance</u> :
Mr. K.K. Maiti, Adv.
... for appellant
Mr. Atish Dipankar Roy, Adv.
...for respondent

The Court : This appeal filed by the revenue under Section 35G of the Central Excise Act, 1944 (the Act, for brevity) is directed against the order dated June 10, 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata (Tribunal) in Ex. Appeal No.78114/18.

We have heard Mr. K.K. Maiti, learned standing Counsel appearing for the appellant/revenue and Mr. Atish Dipankar Roy, learned Counsel for the respondent/assessee.

The appeal was admitted for the purpose of scrutinising the effect of the order passed by the Hon'ble Supreme Court dated September 24, 2015, which had granted an order of stay and the decision of the High Court of Gujarat in the case of Indsur Global Ltd. vs. Union of India, 2014(310) E.L.T 833 (Guj.). Identical matters came up before this Court on earlier occasion and the Court upon perusal of the material papers found the tax effect in these cases were less than the threshold limit fixed in the Circular issued by the Central Board for pursuing appeals before the High Court. Therefore, the appeals filed by the revenue were disposed of by observing that the tax effect is less than the threshold limit. However, the legal issue as regards validity of the Rule 8(3)A of the Central Excise Rules, 2002, which was struck down by the Gujarat High Court in the case of Indsur Global Ltd. and which judgment has been stayed by the Hon'ble Supreme Court, had been left over. In the instant case from the order in original dated January 5, 2016 we find that the demand of Central Excise duty was Rs.1,57,553/-. If that be so, the revenue cannot pursue this appeal on the ground of low tax effect subject of course with regard to the legal issue regarding the validity of Rule 8(3)A of 2002 Rules.

Similar view was taken by this Court in the case of *Commissioner of Central Excise, Kolkata-IV, vs. Sai Construction* in CEXA/31/2021 dated February 3, 2022.

Thus, following the above principle, the finding rendered by the Tribunal with regard to the validity of Rule 8(3A) of the Rule is set aside and the legal issue is left open and shall abide by the decision of the Hon'ble Supreme Court.

We make it clear that the appeal filed by the revenue has been disposed of on the ground of low tax effect and consequently no recovery can be effected from the respondent/assessee.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

S.Pal/SN/S.Das/A.S.