OD-9

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CENTRAL EXCISE)
ORIGINAL SIDE

CEXA/3/2022
IA NO:GA/1/2022;GA/2/2022
PRINCIPAL COMMISSIONER OF CENTRAL EXCISE, KOL
VS.
M/s. STAR BATTERY LTD.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE BIVAS PATTANAYAK
Date : 4th July, 2022.

Appearance:
Mr. Uday Shankar Bhattacharyya, Adv.
Ms. Ekta Sinha, Adv.
Ms. Banani Bhattacharyya, Adv.
…for appellant
Mr. Anil Kumar Dugar, Adv.
Mr. R. Chatterjee, Adv.
for respondent

Re: GA/1/2022

The Court : We have heard Mr. Bhattacharyya, learned standing Counsel appearing for the appellant and Mr. Dugar, learned Advocate appearing for the respondent/assessee.

There is a delay of 927 days in filing the appeal.

Though we are not fully convinced with the explanation offered by the revenue, considering the fact that appeal itself cannot be pursued by the revenue on account of low tax effect, we are inclined to dispose of the appeal itself and, therefore, we exercise discretion and codone the delay in filing the appeal.

Accordingly, the application is allowed.

RE: CEXA/3/2022

This appeal filed by the revenue is directed against the common order dated 27th November, 2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, in Appeal Nos. E/269/2009, E/320/2012, E/332/2012, E/333/2012 and E/464/2012 Eastern Zonal Bench, Kolkata (Tribunal). The Tribunal by the impugned order had not decided the matter on merits but had followed the decision of the Gujarat High Court in *INDSUR GLOBAL LTD. Vs.UNION OF INDIA*; 2014 (310) ELT 833 (Guj.) and allowed the appeals filed by the assessee. Since the order passed by the Tribunal is a common order the revenue has filed a single appeal before this Court. The identical issue came up for consideration before this Court in the case of *COMMISSIONER OF CENTRAL EXCISE KOLKATA IV SAI CONSTRUCTION*; in CEXA 31 of 2021 and by judgment dated February 3, 2022 the legal issue was raised by the revenue was left open and the appeal was disposed of on the ground of low tax effect. Similar was the view taken in CEXA/29/2021 in the case of *PRINCIPAL COMMISSIONER OF CGST AND CENTRAL EXCISE, HOWRAH COMMISSIONERATE Vs.M/s. FENASIA LTD. AND ANR.* Dated 17th February, 2022. The argument on behalf of the revenue is that the total amount of excise duty involved in the instant case is above threshold limit and apart from that when there is questions of law which has been raised the circular fixing the monetary limit will not be applicable and this Court can entertain the appeal to decide the substantial questions of law.

Firstly we note that there were five show cause notices issued to the respondent/assessee and the demand for each of the show cause notice are Rs.25,79,859/-, Rs.19,85,077/-, Rs.16,79,957/-, Rs.28,08,544/- and Rs.14,46,768/-.

The show-cause notices were contested by the respondent/assessee and the Commissioner of Central Excise passed a common order dated 31st August, 2006 on all the show-cause notices. As a result the sum total of the total demand made was Rs.1,05,00,205/-. However, as against the said order the assessee preferred five appeals before the Tribunal and the Tribunal by the common order without going into the merits of the matter had merely followed the decision of the Gujarat High Court, referred to the above and allowed the appeals filed by the assessee. As rightly pointed out by Mr. Bhattacharyya, learned Standing Counsel for revenue the decision of the Gujarat high Court in the matter of *INDSUR GLOBAL LTD.* (supra) has been challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court has entertained the appeal and granted an order of interim stay.

In the given circumstances, we are to consider what has to be done in this appeal even assuming that revenue was successful before the Hon'ble Supreme Court and the decision of the Gujarat High Court was reversed and the matter has to be heard by us, the best that can be done is to remand the matter to the Tribunal to take a decision on merits.

However, when the matter goes back to the Tribunal, would have to take note of the fact that in each of the five appeals the tax effect is less than the threshold limit fixed by the Circular issued by the C.B.C.E.

Therefore, the Tribunal cannot take a decision on merits. Therefore, we are of the view that this appeal can be disposed of by directing the interest of the revenue by living the questions of law open for adjudication at an appropriate state and an appropriate manner.

For the above reasons, the appeal stands disposed of on the ground of low tax effect and the observations made by the Tribunal touching upon the validity of R.8(3A) of the Central Excise Rules is left open.

The stay application being GA/2/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

Pkd/GH.