OD-16

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (Central Excise)
ORIGINAL SIDE

CEXA/17/2021
IA NO: GA/2/2021
THE COMMISSIONER OF CGST AND CX, KOLKATA-NORTH COMMISSIONERATE
VERSUS
M/S. JESSOP & COMPANY LIMITED & ANR.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 4th April, 2022

Appearance :-

Mr. Kaushik Dey, Adv.
Ms. Sanjukta Gupta, Adv.
... For Appellant

The Court : We have heard Mr. Kaushik Dey, learned Standing Counsel appearing for the appellant/revenue and the learned Counsel appearing for the respondent/assessee.

This appeal filed by the revenue under Section 35G of the Central Excise Act, 1944 is directed against the order dated 27th November, 2019 passed by the Customs, Excise & Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (Tribunal). The revenue has raised the following substantial questions of law for consideration:

a) Whether the Tribunal was justified in setting aside the impugned Order in Original No.10/COMMR/CE/KOL-

III/2010-11 dated 17th September, 2010 when the identical issue involving Rule 8(3A) of the Central Excise Rule, 2002 was subjudice before the Hon'ble Supreme Court of India in light of the stay order passed in Special Leave Petition filed by the department in (i)SLP No.16523 of 2015 in the case of Union of India Vs. Indsur Global Ltd. (ii) SLP No.20130 of 2015 in the case of Commissioner of Central Excise Vs. M/s. Precision Fastners Ltd. (iii) SLP No.34194 of 2015 in the case of Union of India Vs. M/s. Malladi Drugs and Pharmaceuticals Ltd. and (iv) SLP No.7546 of 2016 in the case of Union of India Vs. M/s. Sandley Industries?

b) Whether the Tribunal was justified in not maintaining status quo and keep the matter pending until the availability of the Hon'ble Supreme Court final decision regarding the "ultra vires issue of Rule 8(3A) of the Central Excise Rule, 2002"?

c) Whether the order passed by the Learned Tribunal is whimsical, perverse and without giving proper reasons?

The Tribunal by the impugned order allowed the assessee's appeal on the short ground that the provisions of Rule 8(3A) of the Central Excise Rules, 2002 has been struck down and in this regard referred to decisions of other High Courts, more particularly the decision in Indsur Global Ltd. Vs. Union of India, reported in 2014 (310) ELT 833 (Gujarat).

It is not in dispute that against the said decision, the revenue has preferred appeal before the Hon'ble Supreme Court in Special

Leave to Appeal (C)…CC No (s).16523/2015 and by order dated 24th September, 2015 the judgment in Indsur Global Ltd. has been stayed. Therefore, the proper course that should be adopted is to await the decision of the Hon'ble Supreme Court and, thereafter, the appeal can be taken up for consideration.

Since the Tribunal has not discussed anything on facts, except to note that Rule 8(3A) has been struck down by the said decision and the said decision having been stayed by the Hon'ble Supreme Court, we are of the considered view that the matter should be sent back to the Tribunal and the same shall be kept pending awaiting the decision of the Hon'ble Supreme Court.

For such reason alone, the appeal is allowed and the order passed by the Tribunal is set aside and the appeal is restored to the file of the learned Tribunal which shall await the decision of the Hon'ble Supreme Court in the appeal filed against the judgment in Indsur Global Ltd. (supra).

During the pendency of the appeal if the Tribunal had granted any interim orders, the said interim order shall continue till the disposal of the appeal by the Tribunal.

The stay application being IA No.GA/2/2021 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/SN
AR(CR)