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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO 34 of 2020
With
WPO 1442 of 2008
IA No: GA/1/2017 (Old No.GA/1892/2017),
GA/2/2017 (Old No.GA/1893/2017)

COMMISSIONER OF CENTRAL EXCISE, KOLKATA-IV, COMMISSIONERATE
VERSUS
ASSAM TUBES LTD. & ORS.

BEFORE :

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

Date : 11th March, 2022

Appearance :
Mr. Somnath Ganguli, Adv.
Mr. Tapan Bhanja, Adv.
...for the appellant.

Mr. S.P.Majumder, Adv.
Mr. P.K. Das, Adv.
...for the respondents.

Re : IA No: GA/1/2017 (Old No.GA/1892/2017),

The Court : We have heard Mr. Somnath Ganguli, learned standing counsel along with Mr. Tapan Bhanja, learned counsel appearing for the appellant and Mr. S.P. Majumder, learned counsel along with Mr. P.K. Das, learned counsel appearing for the respondents.

There is a delay of 122 days in filing the appeal. We have perused the affidavit filed in support of the application for condonation of delay and we are satisfied with the reasons given therein. Therefore, the delay in filing the appeal is condoned. Accordingly, the application being IA No: GA/1/2017 (Old No.GA/1892/2017) stands allowed.

Re : APO/34/2020

This intra court appeal is directed against the order dated 22nd September, 2016 passed in WP No.1442 of 2008 by which the writ petition filed by the appellant department challenging the order of Settlement Commission under Section 32F of the Central Excise Act, 1944 was dismissed.

Learned counsel appearing for the respondents/assessees pointed out that the appeal filed by the appellant department questioning the correctness of the relief granted by the Settlement Commission in so far as levy of central tax duty to the tune of Rs.92,74,842/- on the alleged amount of clandestine removal of finished goods.

It is submitted by the learned counsel that the appellant department cannot pursue this appeal on account of the instruction given by the Central Board of Indirect Taxes and Customs dated 22nd August, 2019 wherein the monetary limit for pursuing the appeals before the High Courts was fixed at Rs.1,00,00,000/-.

We have heard the learned counsel on the above submissions and also perused the memorandum of appeal filed by the appellant department and we find that the appeal is restricted only to that portion of the order levying central tax duty to the tune of Rs.93,43,940/-. Apart from that, we find that the case will not fall under any exceptional clauses provided in the instruction dated 22nd August, 2019. Therefore, the appeal cannot be pursued by the appellant.

Consequently, the appeal (APO No.34 of 2020) stands disposed of on the ground of low tax effect. Accordingly, the application for stay being IA No: GA/2/2017 (Old No.GA/1893/2017) also stands disposed of.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/s.das