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IN THE HIGH COURT OF ORISSA AT CUTTACK
OTAPL No. 7 of 2015 and OTAPL No. 6 of 2015

OTAPL No.7 of 2015

Central Excise, Customs and Service Tax, Bhubaneswar-1, represented through its Commissioner	....	***Appellant***
-versus-		
M/s. A.K. Das Associates Ltd., H/1, Satyanagar, Bhubaneswar	....	***Respondent***

AND

OTAPL No.6 of 2015

Central Excise, Customs and Service Tax, Bhubaneswar-1, represented through its Commissioner	....	***Appellant***
-versus-		
M/s. A.K. Das Associates Ltd., H/1, Satyanagar, Bhubaneswar	....	***Respondent***

Advocates, appeared in these cases:

For Appellant(s)	:	Choudhury Satyajit Mishra Senior Standing Counsel
For Respondent(s)	:	Mrs. Pami Rath, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
07.12.2022

Dr. S. Muralidhar, CJ.

1. A preliminary objection has been raised by the Respondent-Assessee to the maintainability of the present appeal relying on the judgment of the Supreme Court of India in ***Navin Chemicals Mfg. and Trading Co. Ltd. v. Collector of Customs (1993) 4 SCC 320.*** It is contended by Mrs. Pami, Rath, learned counsel for the

Respondent Assessee that inasmuch as the dispute emanating from the impugned order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) concerns the rate of duty, the recourse for the Appellant Department is to file an appeal directly in the Supreme Court of India under Section 35L of the Central Excise Act, 1944 (CE Act).

2. It is seen from the impugned order of the CESTAT that the Assessee was claiming exemption from payment of duty under a notification No.45 of 2010 dated 20th July, 2010 issued under Section 11-C of the CE Act read with Section 83 of the Finance Act in terms of which no service tax was required to be paid in respect of taxable services relating to transmission and distribution of electricity for a period up to 21st June, 2010. According to the Respondent, since the appeal before the CESTAT covered the period specified in the notification, the Respondent was exempt from payment of any service tax. This plea was accepted by the CESTAT following the earlier decisions of its Co-Ordinate Benches.

3. In *Navin Chemicals Mfg. and Trading Co. Ltd. (supra),* the Supreme Court clarified that "questions relating to rate of duty and to the value of goods for the purposes of assessment are questions that squarely fall within the meaning of the expression 'determination of any question' having a relation to the rate of duty or to the value of goods for the purposes of assessment" in Section 129D(5) of the Customs Act, 1962 which corresponds to Section 35L (2) of the CE Act. It was further clarified that "a dispute as to the classification of goods and as to whether or not

they are covered by exemption notification relates directly and proximately to the rate applicable thereto for the purposes of assessment."

4. It may be noticed here that a similar view has been taken by several High Courts including the High Court of Bombay in ***APM Terminals India Pvt. Ltd. v. Commissioner of Central Excise, Navi Mumbai MANU/MH/3535/2018***; ***Commissioner of CGST and Central Excise v. Hindustan Petroleum Corporation Ltd. MANU/MH/4297/2021***, the Delhi High Court in ***Commissioner of Service Tax Delhi v. Bharati Airtel Limited MANU/DE/0591/2013***, and the Karnataka High Court in ***Commissioner of S.T., Bangalore v. Scott Wilson Kirkpatrick (I) Ltd. 2011 (23) S.T.R. 321 (Kar.).***

5. In that view of the matter, while not entertaining the present appeals the Court leaves it open to the Appellant to file an appropriate appeal under Section 35L(1)(b) of the CE Act in the Supreme Court of India against the impugned order of the CESTAT in accordance with law.

6. The appeals are disposed of in the above terms.

(S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K.Jena/Secy.