OD-1 & 2

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

CEXA/1/2023
IA NO. GA/2/2023

COMMISSIONER OF CGST & CX., HALDIA COMMISSIONERATE
Vs.
M/S. INDIAN OIL CORPORATION LIMITED, REFINERY DIVISION

CEXA/2/2023
IA NO. GA/2/2023

COMMISSIONER OF CGST & CX., HALDIA COMMISSIONERATE
Vs.
M/S. INDIAN OIL CORPORATION LIMITED, REFINERY DIVISION

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 9th February 2023.

Appearance:
Mr. K. K. Maiti, Adv.
Mr. Tapan Bhanja, Adv.
...for the appellant.

Mr. Saurabh Bagaria, Adv.
Mr. Rites Goel, Adv.
...for the respondent.

The Court : These appeals have been preferred by the revenue under Section 35G of the Central Excise Act 1944 challenging the correctness of the order passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata (Tribunal) challenging the common order dated 14.6.2022 in Appeal Nos. 75164/2022 and 76508/2018. The Tribunal had allowed five appeals by the common impugned order. However, we find that the revenue has preferred appeals only in respect of two of those orders. The revenue has raised the following substantial questions of law for consideration :

i) *Whether the effective date of the two Notifications No.22/2014-CE dated 12.11.2014 and 24/2014-Ce dated 02.12.2014 issued on 12.11.2014 and 02.12.2014 is in consonance with section 5A(5a) of the Central Excise Act, 1944?*

ii) *Whether the payment of duty by the respondent for the month of December, 2014 and January, 2015 by 6th January, 2015 and 6th February, 2015 in terms of Rule 8 of the Central Excise Rules, 2002 against clearance made on 12.11.2014 and 02.12.2014 is covered under the Notification No.22/2014-CE dated 12.11.2014 and Notification 24/2014-Ce dated 02.12.2014 or not ?*

We have heard Mr. K. K. Maiti and Mr. Tapan Bhanja, learned standing Counsel appearing on behalf of the appellant revenue and Mr. Bagaria, learned Advocate appearing for the respondent/assessee.

The short issue which falls for consideration is the date on which the notifications which were relied upon by the assessee came into force. We need not labour much to find an answer to this issue as the Ahmedabad Bench of the Tribunal has considered elaborately this issue in the assessee's own case pertaining to the very same two notifications and has come to a conclusive finding that the notifications cannot be applied to the case of the assesse and they are entitled for refund. The relevant paragraph is quoted hereinbelow:-

> *"From the above search, it is clear that the notification No.22/2014 was published on 22nd November, 2014 and notification no. 24/2014 was published on 11th December, 2014 therefore, both the notifications will be effective from the date of its publication i.e. 22nd November, 2014 and 11th December, 2014 respectively therefore, the contention of the lower authority that the notification will be effective from the date of its issue of notification is absolutely incorrect. Therefore, refund on this ground is admissible to the appellant."*

The above factual position is not being disputed by the revenue more so when the order passed by the Ahmedabad Tribunal has been given effect to and refund has been ordered. That apart in the cases on hand the revenue has accepted the impugned order and by orders dated 26.10.22 has granted refund. Inasmuch as the fact that the notifications were published only on 22.11.2014 and 11.12.2014, the same would be the date on which the notifications came into force and, therefore, the finding recorded by the adjudicating authority and the first Appellate Authority that the notifications came into effect on 11.12.2013 is factually incorrect. Furthermore, the respondent/assessee has made a search in the official website of the Department of Publication, Ministry of Housing and Urban Affairs, Government of India from which it is seen that notification No. 22 of 2014 was issued on 12.11.2014 but was published in the Gazette only on 22.11.2014. Likewise, Notification No. 24 of 2014 was issued on 2.12.2014 and published on 11.12.2014. Thus the notifications would come into effect only from the date of such publication and the Learned Tribunal rightly allowed the assessee's appeal. That apart the appellant/revenue having implemented the order passed by the learned Tribunal and granted refund by an order dated 26.10.2022 which precluded from pursuing this appeal.

For the above reasons the appeals are dismissed and the substantial questions of law are answered against the revenue.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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