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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [CENTRAL EXCISE]
ORIGINAL SIDE

CEXA/15/2009
IA NO.GA/1/2009 (OLD NO. GA/498/2009)
COMMISSIONER OF CENTRAL EXCISE, KOLKATA-V, COMMISSIONERATE
VS.
M/s. SANCHAR POLYTUBES & ORS.

BEFORE :
THE HON'BLE T.S. SIVAGNANAM ACTING CHIEF JUSTICE
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 3rd May, 2023.

<u>Appearance</u> :
Mr. Vipul Kundalia, Adv.
Ms. Ekta Sinha, Adv.
...for appellant

The Court:- This appeal filed by the revenue under Section 35G of the Central Excise Act, 1944 [the Act] is directed against the order dated 12.8.2008 passed by the Customs Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata in Appeal No. –EDM-266-267/05. The appeal was admitted on June 10, 2009 on the following substantial question of law:-

> "Whether the non-filing of appeals by the department in respect of some similar matters could be held as a bar against the department in filing an appeal in other similar matter when the department thinks that unless an appeal is filed the same is likely to seriously jeopardise the interest of the department ?"

We have heard the learned standing Counsel Mr. Vipul Kundalia, and Ms. Ekta Sinha, learned Counsel appearing for the appellant.

The short issue which falls for consideration is whether the order passed by the learned Tribunal dismissing the appeal filed by the revenue and confirming the order passed by the adjudicating authority dated 29.3.2004 calls for interference. The learned Tribunal had noted that the adjudicating authority namely the Commissioner had taken note of the earlier decision passed by the Tribunal on identical cases are rather group cases which all arose out of the allegations which were made against those assessees as well as the respondent/assessee by the Directorate General of Anti Evasion. The orders passed by the Tribunal had attained finality and, therefore, the issue would be whether the adjudicating Commissioner could have taken a different view. Had the Adjudication Commissioner taken a different view, it would have been held to be against judicial discipline. In this regard, the learned Tribunal rightly noted the decision of the Hon'ble Supreme Court in Union of India Vs. Kamlakshi Finance Corporation Finance Corporation 1991(55) ELT 433(S.C.) wherein it was held that the principles of judicial discipline require that the orders of the Higher Appellate Authority should be followed unreservedly by the subordinate authorities. The orders passed by the Tribunal in the case of Associated Polymer Industries Vs. CCE ; 2008 (227) ELT 449 (TRI) – Calcutta was a decision in a group case similar to that of the assessee's case which was considered by the Tribunal and the appeal filed by the assessee was allowed. The said order was accepted by the department and no appeal was preferred. In such circumstances, we are of the view that the learned Tribunal was fully justified in following the earlier decision and dismissing the appeal filed by the revenue. As pointed out earlier if the adjudicating Commissioner did not follow the earlier order passed by the Tribunal then he would have been put to serious problem. Therefore, the order passed by the learned Tribunal affirming the order passed by the Adjudicating Commissioner is just and proper and does not call for any interference.

Accordingly, the appeal is dismissed and the substantial question of law is answered against the revenue.

Consequently, the GA/1/2009 stands closed.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE)

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.