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

CEXA/26/2009

COMMISSIONER OF SERVICE TAX, KOLKATA
VS.
M/S. REMAC MARKETING PVT. LTD.

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

Appearance :
Mr. K.K. Maity, Adv.
Ms. Aishwarya Rajashree, 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 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata in Service Tax Appeal No.119 of 2008 dated 1st October, 2008. The appeal was admitted on 17th June, 2009 on the following substantial question of law.

> "Whether the Tribunal substantially erred in law in reducing the penalty imposed by the adjudicating authority inasmuch as a provision for imposing penalty in a financial statute should be construed as a mandatory provision ?"

We have heard Mr. K. K. Maity, learned counsel for the appellant/revenue.

On perusal of the order passed by the learned Tribunal we find that the service tax demanded is Rs.9,67,681/-. If that be so, the revenue cannot prosecute this matter and the appeal has to be dismissed on the ground of low tax effect. The circular issued by the Board in this regard is also fully applied to pending appeals before this Court. Thus, by applying the said Circular, this appeal is dismissed on the ground of low tax effect. Substantial question of law framed for consideration is left open.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE)

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.