OD – 85

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Central Excise]

ORIGINAL SIDE

CEXA/27/2009
IA NO: GA/1/2009
(Old No:GA/1018/2009)

COMMISSIONER OF CENTRAL EXCISE, HALDIA
VS
M/S INDO CHEM CORPORATION

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 21st December, 2023

Appearance :
Smt. Aishwarya Rajyashree, Adv.
..for the appellant.

1. Heard Smt. Aishwarya Rajyashree, learned counsel for the appellant. This Central Excise Appeal under Section 35G of the Central Excise Act, 1944 has been filed challenging the Order No.S-825/A-1024/Kol/2008 dated 14.10.2008 passed by the Customs, Excise & Service Tax Appellate Tribunal, East Zonal Bench, Kolkata in Excise Appeal No.91/2008, arising out of Order in Original No.24/Commissioner/CE/Haldia/ADJN./2007 dated 27.11.2007. By the impugned order the Tribunal has allowed the appeal of the assessee and dismissed the matter. More than 15 years have passed from the date of the aforesaid order of remand by the Tribunal. There is nothing on record to indicate that pursuant to the remand order, the concerned Commissioner of Central Excise has not yet passed any order.

2. Apart from the above, we find that the Tribunal has recorded the following findings in paragraphs 5 and 6 of the impugned order :-

"5. After considering the submissions from both sides, we find that since the Appellants do not have a net duty-liability even for the period after 09.09.2005 when they have taken the Excise Registration, the explanation put forth by them that they had no mala fide motive in not reporting production and clearance earlier appears to be bonafide and plausible. Their submission in this regard is further strengthened by the fact that there is no duty demand for the period after 09.09.2005, which goes to show that after allowing the small-scale exemption, which we find, has not been denied by the Department even while issuing the Show Case Notice, the Appellants would not have any net duty-liability for the past period i.e., from 2002-03 till 08.09.2005, if the calculation submitted by the Appellants in paragraph 8 of the Grounds of Appeal is correct. It has been submitted by the Appellants that they had submitted all the invoices and other documents before the Adjudicating Authority, but he has not taken the same into consideration, or for examination, solely on the ground that the Appellants were not registered and hence, not eligible for CENVAT Credit.

6. In the circumstances of the case where there does not appear to be any net duty-liability on the impugned goods manufactured by the Appellants, it would appear reasonable to accept the bonafide plea made by the Appellants that not taking the Excise Registration on their behalf was unintentional arising out of the belief that the product made by them was not excisable. We also find that though they came forward for taking Excise Registration on 09.09.2005, the Jurisdiction Authorities did not take any steps to ascertain the production and clearance made by the Appellants prior to that date, as otherwise they would not have waited for issuing the Show Cause Notice after more than one year, on 30.11.2006. While the Appellants are certainly liable to penal action for not taking Excise Registration and not submitting the periodical returns from time to time and for not maintaining the prescribed registers, it would be necessary to take a liberal view in their case and allow them the small-scale exemption, computation on the basis of cum-duty price and set-off against the CENVAT Credit on the invoices issued by public sector suppliers subject to being available for verification. Accordingly, we set aside the impugned Order and remand the matter to the Original Authority for verifying the invoices to be produced by the Appellants before him and for allowing *the Credit in respect of the same while computing the new duty demand, if any. The Appellants shall not be liable for any penalty for evasion of duty if the net duty demand is nil. However, the Adjudicating Authority shall be free to determine the penalty for other violations of laws. The Appeal is allowed by way of remand in the above terms".*

3. We do not find any manifest error of law in the impugned order of the Tribunal. No substantial question of law is involved. Therefore, the appeal is dismissed.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

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