OD-97

CEXA/8/2011

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (Central Excise)
ORIGINAL SIDE

COMMISSIOER OF CENTRAL EXCISE,
BOLPUR COMMISSIONERATE

-Versus-

M/S. STEEL AUTHORITY OF INDIA LIMITED

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

Appearance:
Mr. Saurov Mallick, Adv.
...for the appellant.

Ms. Udita Saraf, Adv.
...for the respondent.

The Court : Heard learned counsel for both the parties.

This central excise appeal under Section 35G of the Central Excise Act, 1944 has been filed challenging the impugned order no.S-428/A-656/Ko9l/2010 dated 13th December, 2010 in Central Excise Appeal No.54 of 2009 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata whereby the Tribunal has remanded the matter to the jurisdictional Commissioner of Central Excise to decide in accordance with the provision of the amended rules after affording opportunity of hearing to the appellant. Perusal of the order in original dated 21.10.2008 passed by the Commissioner of Central Excise, Bolpur shows that the Commissioner was having no occasion to consider the effect of amendment in CENVAT Credit Rules, 2001, 2002 and 2004 by Sections 71 to 73 of the Finance Act, 2010.

Under the Circumstances, the order of remand cannot be said to suffer from any manifest error of law. Accordingly, the question of law on which the appeal was admitted is accordingly modified and the question is framed as under:

> *"Whether under the facts and circumstances of the case, the Tribunal was justified to remand the case to the jurisdictional Commissioner of Central Excise ?"*

Since the amended rules may have some significance as to the liability of the assessee and the rules were amended with retrospective effect subsequent to the order in original passed by the Commissioner of Central Excise, therefore, we do not find any apparent error of law in the impugned order of the Tribunal.

For all the reasons aforestated, the substantial question of law as re-framed above is answered in the affirmative i.e., against the revenue.

The appeal (CEXA/8/2011) is accordingly dismissed.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

As.