IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15669 of 2024

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Prabhat Zarda Factory India Pvt. Ltd. a company incorporated under the Companies' Act, 1956 having its office at Sikandarpur, Muzaffarpur, through its Director Rajesh Kumar (aged about 45 years (Male) son of Late Shridhar Prasad, resident of New Area Sikandarpur, Musahri, PO + PS-Ramana District Muzaffarpur, Bihar.

... ... Petitioner/s

Versus

Commissioner, Central Excise, Patna now designated as Commissioner, CGST & CX, Patna having its office at Bir Chand Patel Marg, Patna-800001.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.D.V.Pathy, Advocate
For the Respondent/s	:	Dr. K.N. Singh, Additional Solicitor General Mr. Anshuman Singh, Sr. SC, CGST & CX Mr. Prabhat Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-11-2024

The petitioner is aggrieved with the order of the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata, which refused to interfere with their earlier order, holding that there was no rectification of mistake pointed out by the petitioner-appellant.

2. The brief facts to be noticed is that the petitioner had challenged an order of the Tribunal before this Court under Section 35H of the Central Excise Act, 1944. Before this Court, it was argued that the very issue decided by the Tribunal, by the impugned order, was referred to a larger Bench, and the

impugned order was overruled by the larger Bench of the Tribunal in **Larsen and Toubro Ltd. v. Commissioner of Income Tax, Chennai** vide order reported in **2006 (3) S.T.R. 321**. It was submitted before Court that, on the larger Bench overruling the impugned order of the Tribunal, the assessee became entitled to the relief. However, the Division Bench by Annexure-P-1 found that Section 35H is no more in the statute book; it having been omitted by National Tax Tribunal Act, 2005. On the request of the petitioner, the petitioner was left to avail alternate remedies.

3. The petitioner filed a rectification application before the Tribunal, which stood rejected, as per Annexure-P-3.

4. The learned Counsel appearing for the petitioner would contend that Section 35H is very much in the statute book; since the National Tax Tribunal Act, 2005 was set aside as *ultra vires* by the Hon'ble Supreme Court in **Madras Bar Association v. Union of India & Anr. (Civil Appeal No. 3850/2006)**, in which circumstance, Section 35H revives.

5. We cannot but notice that we are not concerned with the Tax Reference Case as of now, which has already been decided by another Division Bench of this Court, especially recording the prayer of the petitioner to permit him to avail

alternate remedies. Rectification application definitely is not the remedy that is available as has been held by the Tribunal; which can only rectify apparent errors. The petitioner has not thought it fit to challenge Annexure-P-1 order also.

6. In such circumstances, we find no reason to entertain the writ petition and the same stands dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

P.K.P./-

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