

OD-51

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CEXA/3/2024
IA NO: GA/1/2024
COMMISSIONER OF CGST & CENTRAL EXCISE, HOWRAH
VS.
M/S. ALISHAN VENEER & PLYWOOD PVT. LTD.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 19th April, 2024

Appearance :
Mr. Kaushik De, Adv.
Ms. Ekta Sinha, Adv.
...for appellant

Mr. Atish Dipankar Ray, Adv.
Mr. D. Basu Ray, Adv.
...for respondent

The Court : This appeal filed by the revenue is directed against the order passed by the Custom, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata, dated 16th June, 2023 being Final Order no. 75725/2023.

The revenue has raised the following substantial questions of law for consideration :-

- a) For that the Ld. Tribunal failed to appreciate the fact that the Hon'ble Supreme Court has granted an interim stay order against the judgment passed by the Hon'ble Gujarat High Court in the matter of Indsur Global Ltd. vs. UOI [2011(310)ELT 833 (Guj.)] and as such order of the Commissioner (Appeal) in Order-in Appeal No. 26/HWH/CE/2019-20 relying on the said judgment passed by the Hon'ble Gujarat High Court is illegal.
- b) For that the Ld. Tribunal failed to appreciate the fact that the Board vide Instruction F.No. 390/Misc./163.2010-JC, dated 17-08-2011 had stated at point No. 3 that in case of adverse judgments relating to the "Constitutional validity of the provisions of an Act or Rule is under challenge," then the same may be contested irrespective of the amount involved.

We have heard Mr. Kaushik De, learned Counsel appearing for the appellant and Mr. Atish Dipankar Ray, learned Counsel for the respondent.

We have perused the Order-in-original and we find that the monetary limit involved in the case would not permit the Department to pursue the matter in appeal before this Court in the light of the Circular issued by the CBDT.

Therefore, this appeal is disposed of on the ground of monetary limit and consequently, the substantial questions of law are left open.

The stay application IA No: GA/1/2024 also stands disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)