

OD-8

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

CEXA/5/2024
IA NO: GA/1/2024
COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX HALDIA
VS
M/S SARVOPARI IMPEX PVT LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 9th July, 2024.

Appearance :
Mr. S.S. Banerjee, Adv.
Mr. Tapan Bhanja, Adv.
...for appellant
Mr. Indranil Banerjee, Adv.
Mr. S. Mukherjee, Adv.
...for respondent.

The Court :- We have heard learned Counsel on either sides.

This appeal by the revenue filed under Section 35G of the Central Excise Act, 1944 (the Act) is directed against the order dated 26.07.2023 passed by the Customs, Excise and Service Tax Appellate Tribunal in Excise Appeal No. 75332 of 2017. The revenue has suggested the following substantial questions of law for consideration :-

- a. Whether the respondent is eligible for remission of duty under Rule 21 of the Central Excise Rules, 2002 when the respondent failed to establish the quantity of stock of raw materials and plant and machinery which were destroyed in fire ?
- b. Whether the learned Tribunal being the ultimate fact finding authority ought to have appreciated that the adjudicating authority has erred in his decision by allowing the benefit of remission of duty under Rule 21 of the Central Excise Rules, 2002 in absence of supporting documents i.e. NOC from the

Fire Department, survey report and documents regarding procurement of raw materials etc.?

The appellant department issued show-cause notice to the respondent proposing to reject the claim for remission of CENVAT duty and demanding the same under Section 11A of the Central Excise Act, 1944 apart from proposing to levy interest and impose penalty. It appears that the show cause notice came to be adjudicated without opportunity to the respondent and an order was passed on 28.03.2012 rejecting the remission application.

This order was challenged before the Tribunal and the Tribunal by order dated 17.08.2015 allowed the appeal setting aside the order of adjudication and remanded the matter for de-novo adjudication. Subsequently, the adjudicating authority has afforded an opportunity to the respondent and the case was adjudicated and by Order-in-original dated 15.12.2016, the demand which was proposed in the show cause notice was dropped. Challenging the same, the revenue filed an appeal before the Tribunal which has been dismissed. The primary ground on which the revenue is before us is by contending that the respondent did not produce survey report in which there would have been assessment of the damages which had been caused. The adjudicating authority has noted that the respondent was not furnished with a copy of the survey report and they had filed a writ petition before this Court for a direction to furnish the survey report and they are yet to receive the survey report. However, the Fire Service Department has certified that there occurred a fire incident and the cause of fire incident could not be ascertained and it was felt that it would have been due to electrical short circuit. This factual aspect of the matter was considered and ultimately the adjudicating authority accepted the case of the respondent and dropped the proposed show cause notice. Mr. Banerjee vehemently contend that the quantity of the finished products, raw-material etc. which were said to be lying in the factory had

not been taken note of and the Tribunal without dealing any of the issues raised by the department, has dismissed the appeal. This point cannot be canvassed by the appellant department. This issue cannot be canvassed by the appellant department because whatever the details furnished by the respondent prior to issuance of the show cause notice, namely, quantity of finished goods and other details were never disputed by the department and based on such detail, the show cause notice was issued. Therefore, it will be too late for the revenue to now agitate the said issue before this Court in this appeal. Apart from that, we note that the adjudicating authority has appreciated the factual basis and drafted the proposal made in the show cause notice, the correctness of which was tested by the Tribunal which was affirmed by the order passed by the adjudicating authority.

Thus, we are convinced to hold that no questions of law, much less substantial questions of law, arises for consideration in this appeal.

Accordingly, the appeal is dismissed.

Consequently, the stay application being GA/1/2024 stands dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)