OD-20

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

CEXA/7/2024
IA NO: GA/2/2024, GA/3/2024

COMMISSIONER OF CENTRAL EXCISE BOLPUR COMMISSIONERATE
VS
M/S ALSTOM PROJECTS INDIA LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 24TH APRIL, 2024.

Appearance :
Mr. K. K. Maiti, Adv.
Mr. Tapan Bhanja, Adv.
....for appellant
Mr. Rahul Tangri, Adv.
...for respondent

The Court :- This appeal filed by the revenue is directed against the order dated 2.6.2023 passed by the Customs, Central Excise & Service Tax Appellate Tribunal, East Zonal Bench, Kolkata in Excise Appeal No.315 of 2009. The revenue has raised the following substantial questions of law for consideration.

"a. Whether the Learned Tribunal is required under the law to appreciate the provision of Section 11A of the Central Excise Act before setting aside the Order-in-original ?

b. Whether the date of cancellation of the contract between the respondent and the customer can be considered as relevant date for calculation of the period of limitation when removal of goods was effected in piece-meal and the additional consideration received from the customer has not been reflected in invoices and ER-1s?"

We have heard learned advocates on either side.

The short question which falls for consideration in this case is whether the extended period of limitation under section 11AC could have been invoked by the department and excise duty and penalty could have been imposed. The consistent case of the assessee has summarised by the adjudicating authority in the order in original dated 23.2.2009 is as under.

"2.1. Personal hearing was held on 12.02.2009 when Sri Swapan Kumar Das [Manager-Taxation] appeared on behalf of the noticee. The noticee also vides their letters No.ALSTOM/IND.TAX/EX/SCN/2007 dated 11.12.2007 had submitted reply to the above SCN. The noticee has submitted, inter alia, the following in their defence :-

[i] The main contract dated 19.06.1989 was cancelled after a period of more than 12 years and communicated vide letter dated 30.12.2002. The assessee thereafter submitted the copy of the order of cancellation & compensation thereof to the office of the Assistant Commissioner of Central Excise, Durgapur-II Division vide letter dated 19th March, 2003 which had duly been acknowledged by the Department on 25.03.2003. They once again reiterate that as per cancellation & compensation thereof, the assessee also paid Central Excise Duty of Rs.91,30,289/- towards escalation during March, 2003 and once again submitted to the Range Superintendent with a copy of Cancellation order & compensation

thereof with the details of escalation calculation. This amount was also reflected in monthly return for the month of March, 2003.

[ii] The assessee had regularly submitted monthly ER-1 Returns with the Department. All the dispatches related to Cancellation of Bakreswar Contracts had been completed by October, 2003 and appropriate Central Excise Duty as per the contract had been paid by them. They had also submitted all particulars regarding clearance, payment in the monthly ER-1 Returns submitted with the Department. In the face of all the records and information having been made available to the Department, the invocation of extended period of limitation is not legally tenable. Hence, the instance demand is barred by limitation of time, and thus not legal & sustainable.

[iii] The additional considerations as mentioned in the cancellation & compensation order by the Customer, WBPDCL are only to compensate huge loses incurred by the assessee due to huge outstanding amount on customer for a period of more than 10 years, continuance of erection activities at Bakreswar site, interest on delayed payment, cost of committed labour hour etc. Therefore, the demand is not sustainable and hence the proceeding should be dropped."

In the above matrix the factual position has been brought out by the assessee as to how the department has put on notice about all the proceedings as early as March, 2023. Therefore, the question would be as to whether there was any willful intention on the part of the assessee to evade payment of duty, was there any suppression of material fact with an intention to evade payment of duty, the adjudicating authority having noted this contention raised by the assessee, as referred [supra], has now sought to pick holes in the cancellation order which was issued by concerned agency which had engaged the services of the respondent/assessee. Such a plea cannot be entertained and the same cannot save limitation. Therefore, the learned tribunal was fully justified in considering the facts of the case and held that the extended period of limitation could not have been invoked. Thus, we find there is no question of law much less substantial question of law arises for consideration in this appeal. Therefore, the appeal is dismissed.

After we have dictated the order the learned Advocate appearing for the applicant prays for amendment of the cause title. Such prayer is allowed.

Accordingly, the connected applications being GA/2/2024 and GA/3/2024 are closed.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.