O-381

CEXA/2/2017
IA No.GA/1/2017 (Old No.GA/446/2017)

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

M/S. SOVA ISPAT ALLOYS (MEGA PROJECTS) LTD.

-Versus-

CENTRAL EXCISE & SERVICE TAX APPELLATE TRIBUNAL & ANR.

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 6th March, 2024

Appearance:
Mr. Satyaprem Majumdar, Adv.
Mr. Pradyot Kumkar Das, Adv.
...for the appellant.

Mr. Uday Sankar Bhattacharya, Adv.
Mr. Abhradip Maity, Adv .
...for the respondent.

1. Heard Sri Satyaprem Majumdar, learned counsel for the appellant and Sri Uday Sankar Bhattacharya, learned standing counsel for the respondent.

2. By the impugned order dated 12.08.2016 in appeal Nos.E/75613-75616 of 2016 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata, Eastern Zonal Bench, Kolkata, the appeal of the appellant herein was

dismissed by the Tribunal on the ground of non-compliance of condition of pre-deposit of 7.5% of the duty under Section 35F of the Central Excise Act, 1944.

3. Aggrieved with the aforesaid impugned order of the Tribunal, the appellant has filed the present appeal.

4. We find that since the only question of not making the pre-deposit was involved in the present appeal and the appellants had shown their eagerness to deposit the amount so that the appeal filed before the Tribunal may be decided on merits, on 8.2.2024 we passed the following order:

> *"1. Heard Sri S.P. Majumder learned counsel for the appellant and Sri Uday Sankar Bhattacharya, learned counsel for the respondent.*
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> *2. Sri S.P. Majumder, learned counsel for the appellant, states that the appellant shall comply with the conditions of pre-deposit under Section 35F of the Central Excise Act, 1944 within four weeks and thereupon the appeal may be heard and decided by the Tribunal on merit.*
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> *3. In view of the statement made by the learned counsel for the appellant, as afore-noted, list this appeal in the Monthly List of March, 2024. In the meantime, the appellant may make pre-deposit of 7.5% as required under Section 35F for his appeal to be entertained by the tribunal which has been dismissed by the tribunal due to non-compliance of the aforesaid mandatory condition. The appellant shall submit*

> *the proof of pre-deposit before this Court on or before the next date of listing.”*

5. Learned counsel for the appellant, on instruction, states as also produces a photostat copy of e-Receipt of central excise and service tax payment as proof of Rs.12,80,732/-, Rs.12,26,584/-, Rs.1,50,000/- and Rs.75,000/- said to have been deposited on 29.02.2024 and 01.03.2024. The e-Receipt for central excise and service tax payment with respect to the aforesaid amount as produced today by the learned counsel for the appellant are kept on record.
6. In view of the aforesaid and with consent of learned counsel for the parties, the impugned order of the Tribunal dated 12.08.2016 passed in appeal Nos.E/75613-75616 of 2016 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata, Eastern Zonal Bench, Kolkata, is hereby set aside. The aforesaid appeals filed by the appellant before the Tribunal are restored to its original number. The Tribunal shall verify the proof of payment towards pre-deposit under Section 35F of the Act, 1944 and shall decide the appeal of the appellant in accordance with law on merits expeditiously.
7. The appeal (CEXA/2/2017) is allowed to the extent indicated above.

8. The connected pending application (IA No.GA/1/2017) also stands disposed of.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

As.