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ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
INCOME TAX

CEXA/6/2024; IA NO:GA/2/2024
COMMISSIONER OF CENTRAL EXCISE, KOLKATA II, NOW CGST & CX, HOWRAH
COMMISSIONERATE
-VS-
M/S S A ENTERPRISE

CEXA/13/2024; IA NO:GA/2/2024
COMMISSIONER OF CENTRAL EXCISE, KOLKATA II, NOW CGST & CX, HOWRAH
COMMISSIONERATE
-VS-
M/S S A ENTERPRISE

CEXA/14/2024; IA NO:GA/2/2024
COMMISSIONER OF CENTRAL EXCISE, KOLKATA II, NOW CGST & CX, HOWRAH
COMMISSIONERATE
-VS-
M/S S A ENTERPRISE

CEXA/15/2024; IA NO:GA/2/2024
COMMISSIONER OF CENTRAL EXCISE, KOLKATA II, NOW CGST & CX, HOWRAH
COMMISSIONERATE
-VS-
M/S S A ENTERPRISE

CEXA/16/2024; IA NO:GA/2/2024
COMMISSIONER OF CENTRAL EXCISE, KOLKATA II, NOW CGST & CX, HOWRAH
COMMISSIONERATE
-VS-
SHRI AAYUSH RUNGTA

CEXA/17/2024; IA NO:GA/2/2024
COMMISSIONER OF CENTRAL EXCISE, KOLKATA II, NOW CGST & CX, HOWRAH
COMMISSIONERATE
-VS-
SHRI AAYUSH RUNGTA

PRESENT:
THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

DATE; 24TH MAY 2024.

Mr. K.K. Maiti, Adv.; Ms. E. Sinha, Adv.; Mr. S. Mallick, Adv., for appellant.

Mr. I. Banerjee, Adv., for respondent.

THE COURT: These appeals, filed by the revenue, are directed against the common order passed by the Customs, Central Excise & Service Tax Appellate Tribunal, East Zonal Bench, Kolkata, dated June 27, 2023, allowing the six appeals filed by the respondents herein.

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

- (i) Whether the learned Tribunal has committed gross error of law by not appreciating the provision of section 2(f) of the Central Excise Act, 1944, which includes all the activities incidental and ancillary to completion of manufacture of products, especially when the respondent has declared himself manufacturer and participated in tender procedure as manufacturer and complied all the conditions as of a manufacturer, can be considered as trader?
- (ii) Whether the order passed by the learned Tribunal is liable to be set aside or not?

The respondents in all these appeals had challenged the order of adjudication passed by the Commissioner of Central Excise, Kolkata on various dates, whereby

proposal in the show cause notice was confirmed and central excise duty was levied apart from imposing penalty.

The learned Tribunal had considered the factual position in an elaborate fashion and framed points of consideration holding that the legal issue is whether a noticee can be charged with central excise duty solely on the basis of certain declarations/representations made to it its customers and without it being shown that the said noticee is a manufacturer within the meaning of section 2(f) of the Central Excise Act which defines “manufacture”. The learned Tribunal noted that the show cause notice dated December 24, 2010, which was the first show cause notice, was primarily based on the representation made by the respondent to various power supply corporations stating that it was a manufacturer of the goods supplied by it.

The learned Tribunal took note of the statements recorded from the proprietor/directors and noted that the respondent had taken the factual stand that the declarations/representations to the power supply corporations had been made only for the purpose of procuring business and that they had always engaged in trading and supply of the goods. It was also clarified that the factory at the Belilious Road did not have the required infrastructure to manufacture any transmission line accessory or hardware equipment and that there was no testing facility inside the

said premises. An inventory was taken by the department, which clearly shows lack of manufacturing facility.

One more crucial issue that the learned Tribunal has taken note of is that between the year 2007, when the investigations had been initiated, and the year of 2010, when investigation was resumed, no additional evidence was brought on record by the revenue in order to counter the respondent's contentions. The revenue also could not adduce any positive evidence of clandestine manufacture by the respondent or incriminating evidence showing procurement of unaccounted raw materials/semi-processed goods for the purpose of further manufacturing/job work or discovering of undisclosed manufacturing facility, incriminating statement from any supplier of the respondent.

The learned Tribunal faulted the adjudicating authority who held that excisability or dutiability of the impugned material had never been disputed by the respondent. On going through the order-in-original in its entirety, we also find that this a factually incorrect stand since even in the reply submitted by the respondent, dated May 31, 2011, it was submitted that the goods were manufactured by job workers on principal to principal basis and they could not be treated as manufacturer.

The learned Tribunal has rightly noted that the enquiry and investigations leading upto issuance of the show cause notices dated December 24, 2010 and March 24, 2011, though gives rise to suspicion against the assessee, were insufficient to justify the confirmation of demands.

The learned Tribunal noted the legal position that suspicion, however grave, cannot take the place of proof. Apart from that, the learned Tribunal had analysed the statements recorded from the partners of the respondent firm and found that there was no inconsistency and the department was also not able to bring out any inconsistency. The assessee was able to explain before the learned Tribunal by placing voluminous records which have been taken note of by the learned Tribunal and carefully appreciated. The learned Tribunal, in paragraph 12, has referred to in detail the documents and records which were placed before the learned Tribunal by the respondents to establish their cases.

Thereafter, the learned Tribunal proceeded to deal with the crucial issues of the matter, namely co-relatable purchases and sales; duty paid on purchases; job work; testing at third party premises; demand on sale of materials to private parties and sale of wires, channels, angles etc. and non-existence of alleged four suppliers; physical movement of goods.

Under all the aforementioned sub-headings, the learned Tribunal has dealt with the issue precisely after appreciating the documents which were placed by the respondents before it. Then, the learned Tribunal proceeded to consider as to whether penalty could have been imposed and came to the conclusion that the activities undertaken by the respondents did not amount to manufacture.

Thus, in our view, we find that the learned Tribunal has allowed the respondents' appeals on appreciation and re-appreciation of all the documents placed before it which admittedly were voluminous.

Thus, we find that the matter is entirely factual and no question of law, much less substantial question of law arises for consideration.

For the above reasons, the appeals are dismissed.

All the connected applications are closed.

(T.S SIVAGNANAM, CJ)

(HIRANMAY BHATTACHARYYA, J)