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

CEXA/18/2024
IA NO: GA/2/2024
COMMISSIONER OF CENTRAL EXCISE , KOLKATA -VII
VS
M/S. PRASANTI WAX OILS PRIVATE LIMITED

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

Appearance :
Mr. Tapan Bhanja, Adv.
...for appellant

The Court :- This appeal by the revenue filed under Section 35G of the Central Excise Act, 1944 (the Act) is directed against the order dated 25.04.2023 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata in Excise Appeal No. 431 of 2011. The revenue has suggested the following substantial questions of law for consideration :-

i. Whether the Learned Tribunal is right and justified in allowing the appeal of the assessee/respondent solely relying upon the decision of the Hon'ble High Court of Gujarat in the case of Insur Global Limited vs. Union of India reported in 2014(310)ELT 833 (Guj.) and the decision of the Hon'ble Calcutta High Court in the case of Goyal MG Gases Pvt. Ltd. –vs- UOI when the issue of

Constitutional Validity of Rule 8(3A) of the Central Excise Rules, 2002 is pending before the Hon'ble Supreme Court ?

ii. Whether without to comply with the provisions of Rule 8(1) read with Rule 8(3) of the Central Excise Rules, 2002 can the respondent is permitted to clear their goods in subsequent period ?

iii. Whether the stay granted in the case of Indsur Global Ltd. by the Hon'ble Supreme Court is binding upon the Learned Tribunal or not ?

We have heard the learned Counsel for the appellant.

The two notices sent to the respondent are returned.

This appeal filed by the department under Section 130 of the Customs Act, 1962 is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata (Tribunal) dated 25.04.2023. By the said order, the appeal filed by the respondent/assessee was allowed by following the decision of the High Court of Gujarat in the case of *Indsur Global Ltd. Vs. Union of India [2014 (310) E.L.T. 833 (Guj.)]*. The learned Tribunal has also taken note of the decision of this Court in Goyal MG Gases Pvt. Ltd. Vs. Union of India & Ors. [2017 (8) TMI 1515 - Calcutta High Court]. It cannot be disputed that the decision in the case of Indsur Global (supra) was challenged before the Hon'ble Supreme Court in Special Leave to Appeal No.16523/2015 and by order dated 24th September, 2015 the Hon'ble Supreme Court has stayed the judgment of the High Court of Gujarat. The decision of this Court in Goyal MG Gases (supra) appears to have been rendered taking note of the decision of the High Court of Gujarat in the case of Indsur Global (supra). When similar appeal came up before this Court on earlier occasion, the Court has set aside the order of the learned Tribunal and remanded the matter back to the Tribunal to be kept pending before the Tribunal to be taken up for decision after the judgment is rendered by the Hon'ble Supreme Court. We refer to the order in the case of Commissioner of Central Excise, Bolpur Vs. M/s. KIC Metaliks Ltd., in CEXA/20/2023 dated 24th May, 2024.

In the light of the above, the appeal filed by the department is allowed. The order passed by the learned Tribunal is set aside and the appeal is restored to the file of the learned Tribunal and the matter shall be kept pending and taken up after the judgment of the Hon'ble Supreme Court in Special Leave to Appeal No.16523/2015 and other connected matters.

The substantial questions of law which have been raised are left open.

The connected application [GA/2/2024] stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH