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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Central Excise]

ORIGINAL SIDE

CEXA/20/2024
IA NO: GA/1/2024, GA/2/2024

COMMISSIONER OF CENTRAL EXCISE,
KOLKATA -V
VS
M/S. INDIAN OIL SEALS AND SYNTHETIC PRODUCTS

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 14th June, 2024

<u>Appearance :</u>
Mr.K.K. Maity, Adv.
Mr.Tapan Bhanja, Adv.
..for the appellant.

The Court : We have heard Mr. K.K. Maity, learned senior standing counsel, assisted by Mr. Tapan Bhanja, learned counsel for the appellant/department.

Notice has been sent to the respondent which had returned with the endorsement 'left without intimation'. Subsequently, fresh notice was directed to be sent, that has also returned. Hence, we are constrained to take up the matter for consideration.

There is a delay of 138 days in filing the appeal. We are satisfied with the explanations offered for delay in filing the appeal. The delay is condoned in filing the appeal. The delay condonation application [GA/1/2024] stands allowed.

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 11th May, 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 Surpeme 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.)

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