

OD-12

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

CUSTA/44/2024
IA NO: GA/2/2024

Commissioner Of Customs [Port] Kolkata
VS
M/s B R Marbles Pvt Ltd

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 10th July, 2024.

Appearance :
Mr. K. K. Maity, Adv.
Mr. Tapan Bhanjan, Adv.
...for appellant.

The Court :- This appeal by the revenue is directed against the order dated 11.9.2023 passed by the Learned Customs, Central Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata, in Excise Appeal No. 75151 of 2018.

By the said order the learned Tribunal affirmed the order passed by the Commissioner of Appeals dated 5.10.2017 whereby the Commissioner set aside the interest levied and the penalty demanded from the respondent.

So far as the duty liability is concerned, the same was upheld and the respondent has paid the duty.

We have carefully perused the order passed by the Commissioner of Appeals and we find that the factual position was taken into consideration by the appellate authority and that the respondent was declared as a sick

industrial company in terms of the provisions of the SICA Act and the BIFR appointed ICICI as the operating agency for the purpose of preparing a revival scheme and in the said Terms of Settlement there is a proposal for waiver of interest and liquidated damages on the concessional duty of equipment imported under EPCG scheme. The Terms of Settlement was noted by the Commissioner and relief was granted to the assessee. When the matter travelled up to the tribunal at the instance of the department the learned Tribunal also re-appreciated the factual position and also noted that the department was not able to produce any evidence to support their proposition of misrepresentation or deliberate suppression of facts by the respondent/assessee. Therefore, we find that the matter to be entirely factual and no substantial question of law, much less substantial question of law arises for consideration. Consequently, the appeal fails and the same is dismissed.

Consequently the application also stands dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)