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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [CENTRAL EXCISE]
<u>ORIGINAL SIDE</u>

CEXA/21/2024
IA NO: GA/1/2024
Commissioner of CGST and Cx, Howrah Commissionerate
VS
M/s Rustech Products Private Limited

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

<u>Appearance :</u>
Mr. K.K. Maiti, Adv.
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 13.10.2023 passed by the Learned Customs, Central Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata, in Excise Appeal No. 78314 of 2018. The revenue has suggested the following substantial questions of law for consideration :-

i. Whether the Learned Tribunal has committed gross error of law by rejecting the appeal of the department by not appreciating the provision of Rule 8(3A) of the Central Excise Rule, 2002 ?

ii. Whether the Learned Tribunal is required under the law to hear the appeal on merits or not ?

iii. Whether the Hon'ble Supreme Court has granted stay of the order of the Hon'ble Gujarat High Court in the said issue in the case of Indsur Global Limited vs. Union of India, therefore, rejection of Appeal by the Learned Tribunal is correct 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 13.10.2023. 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/1/2024] stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH