O-325

CEXA/40/2019

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (Central Excise)
ORIGINAL SIDE

COMMISSIONER OF SERVICE TAX, KOLKATA @ COMMISSIONER OF CGST AND CX, KOLKATA SOUTH COMMISSIONERATE

-Versus-

M/S. BHARAT PETROLEUM CORPORATION LTD.

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 8th February, 2024

Appearance:
Mr. Vipul Kundalia, Adv.
Mr. Tapan Bhanja, Adv.
...for the appellant.

1. Heard Sri Vipul Kundalia, learned senior standing counsel assisted by Mr. Tapan Bhanja, learned advocate for the indirect tax/appellant.
2. The revenue has filed the present appeal praying to set aside the order no.FO/76227/2018 dated 06.08.2018 in Service Tax Appeal No.140/2009 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata (East Zonal Bench, Kolkata).
3. The only ground to challenge the impugned order of the Tribunal, as argued before us by learned counsel for the appellant; is that declaration

by the Goods Transport Agency in the consignment note has not been made so as to comply with the two conditions of Notification No.32/2004-ST dated 03.12.2004 that "neither credit on inputs or capital goods used for provision of service has been taken nor the benefit of notification no.12/2003-ST has been taken by them." Therefore, the exemption shall not be available. Learned counsel for the appellant further submits that the declaration separately made by the GTA shall not amount to fulfilment of the condition of the notification No.32/2004-ST dated 03.12.2004 since the circular No.B1/6/2005 - Tru dated 27.7.2005 provides a mechanism for making endorsement on the consignment note and not separately.

4. We have carefully considered the submission of the learned counsel for the appellant and we do not find any substance in it. The aforesaid circular heavily relied by learned counsel for the appellant merely provides that if a declaration in the consignment note is made then it **may suffice** for the purpose of fulfillment of abatement by the person liable to pay service tax. The circular has neither narrowed down the notification in question nor it can narrow down it. It is merely for the purposes of removing the inconvenience in availing the benefit under the notification that the circular provides as an option to make declaration on the consignment note as compliance of the condition of the notification in question. It does not prohibit making a declaration separately.

5. We have also perused the order in original no.47 dated 30.01.2009 passed by the Commissioner of Central Excise, Kolkata wherein he has

exhaustively dealt with the issue and found that conditions have been satisfied by the assessee and, accordingly, he dropped all the proceedings initiated vide show cause notice dated 13.04.2006. The Tribunal, by the impugned order, has affirmed the order in original passed by the Commissioner of Service Tax. The finding of fact has been recorded in the order in original by the Commissioner of Central Excise that conditions have been satisfied by the respondent herein. The Tribunal has concurred with the findings. The findings recorded are findings of fact based on consideration of relevant materials on record. No substantial question of law arises from the impugned order of the Tribunal in view of the fact briefly noted above and the detailed discussion and findings of facts recorded in the order in original passed by the Commissioner of Service Tax. Hence, the appeal deserves to be dismissed.

6. In view of the aforesaid, **the appeal (CEXA/40/2019) is dismissed** at the admission stage.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

As.