OD - 2

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

ORIGINAL SIDE

CEXA/22/2024
IA NO: GA/2/2024
Commissioner Of Central Excise Haldia.
VS
M/s Tata Steel Ltd Hooghly Met Coke Division

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th July, 2024

*Appearance :*
*Mr.K.K. Maity Adv.*
*Mr. Tapan Bhanja, Adv.*
*..for the appellant.*

*Mr. Deepro Sen, Adv.*
*Ms. Payal Banerjee, Adv.*
*....for the respondent.*

The Court : This appeal by the revenue has been filed challenging an order passed by the Customs, Central Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata in Excise Appeal No.75422 of 2017 dated 12.7.2023.

The first substantial question of law raised by the revenue is as hereunder :

*"Whether the Learned Tribunal has committed gross error of law by not deciding the issue that Flue gas will fall under the Customs Tariff Heading 28043000 under the First*

*Schedule to the Central Excise Tariff Act, 1985 as the said Flue gas content Nitrogen 80.08%".*

After we have elaborately heard the learned advocates for the parties, we sustain the preliminary objection raised by the learned advocate appearing for the respondent/assessee that the issued involved in the instant case is a classification dispute as is evident from the question of law raised by the revenue and if that be so, the appeal as against an order passed by the learned Tribunal lies before the Hon'ble Supreme Court and this appeal is not maintainable before this Court.

Accordingly, the appellant is permitted to withdraw this appeal and present the same before the Hon'ble Supreme Court, if so advised.

Registry is directed to return the original certified copy of the impugned order passed by the learned Tribunal.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das/