OD-18

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

CEXA/25/2024
IA NO: GA/2/2024

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, HALDIA
VS
M/S. HUMCHA IMPEX PVT. LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 16th August, 2024.

Appearance :
Mr. S. S. Banerjee, Adv.
Mr. Tapan Bhanja, Adv.
…for appellant
Mr. Indranil Banerjee, Adv.
Mr. Subrata Mukherjee, Adv.
…for respondent

The Court :- This appeal has been filed by the Central Excise and Service Tax Department under Section 35G of the Central Excise Act, 1944 (the Act) against the order dated 26th July, 2023 passed by the Customs Excise and Service Tax Appellate Tribunal, Kolkata (the Tribunal) in Excise Appeal No. 75332 of 2017. The appellant has raised the following substantial questions of law for consideration :-

i) Whether in the facts and circumstances of the instant case the Learned Tribunal was right and justified in dismissing the appeal of the revenue and in affirming the order of the adjudicating authority dated 24.11.2016 without considering the grounds made out by the revenue in support of their case ?

ii) Whether the respondent has followed the statutory norms to get the benefit of remission of duty under Rule 21 of the Central Excise Rules, 2002?

iii) Whether the respondent being an 100% Export Oriented Unit is entitled to the benefit of remission of duty under the provisions of section 23(1) of the Customs Act, 1962 when the respondent violated the condition of notification no. 52/03-Cus dated 31.03.2003 and the conditions specified in the Bond No. 5/B-17/HWD-II/08 dated 10.08.2008 executed under section 59 of the Customs Act, 1962?

iv) Whether the order passed by the Learned Tribunal is a reasonable and speaking one when the Learned Tribunal confined its discussion and finding only one of the grounds of the revenue that *"the fire was avoidable and due to ignorance of the respondent fire took place in the factory premises"* and thereby overlooked the other ground raised by the revenue ?

We have heard Mr. Shib Shankar Banerjee, learned Counsel duly assisted by Mr. Tapan Bhanja, learned advocate appearing for the appellant and Mr. Banerjee, learned Advocate appearing for the respondent.

The Tribunal by the impugned order dismissed two appeals filed by the department namely Excise Appeal No. 75332 of 2017 and Excise Appeal No. 75461 of 2017. As against the order passed in Excise Appeal No. 75461 of 2017 the department had filed an appeal before this Court. In CEXA 5 of 2024 and by judgment dated 9th July, 2024 the appeal was dismissed. The operative portion of the order is as follows:-

> *"The appellant department issued show-cause notice to the respondent proposing to reject the claim for remission of CENVAT duty and demanding the same under Section 11A of the Central Excise Act, 1944 apart from proposing to levy interest and impose penalty. It appears that the show cause notice came to be adjudicated without opportunity to the*

respondent and an order was passed on 28.03.2012 rejecting the remission application.

This order was challenged before the Tribunal and the Tribunal by order dated 17.08.2015 allowed the appeal setting aside the order of adjudication and remanded the matter for de-novo adjudication. Subsequently, the adjudicating authority has afforded an opportunity to the respondent and the case was adjudicated and by Order- in-original dated 15.12.2016, the demand which was proposed in the show cause notice was dropped. Challenging the same, the revenue filed an appeal before the Tribunal which has been dismissed. The primary ground on which the revenue is before us is by contending that the respondent did not produce survey report in which there would have been assessment of the damages which had been caused. The adjudicating authority has noted that the respondent was not furnished with a copy of the survey report and they had filed a writ petition before this Court for a direction to furnish the survey report and they are yet to receive the survey report. However, the Fire Service Department has certified that there occurred a fire incident and the cause of fire incident could not be ascertained and it was felt that it would have been due to electrical short circuit. This factual aspect of the matter was considered and ultimately the adjudicating authority accepted the case of the respondent and dropped the proposed show cause notice. Mr. Banerjee vehemently contend that the quantity of the finished products, raw-material etc. which were said to be lying in the factory had not been taken note of and the Tribunal without dealing any of the issues raised by the department, has dismissed the appeal. This point cannot be canvassed by the appellant department. This issue cannot be *canvassed by the appellant department because whatever the details furnished by the respondent prior to issuance of the show cause notice, namely, quantity of finished goods and other details were never disputed by the department and based on such detail, the show cause notice was issued. Therefore, it will be too late for the revenue to now agitate the said issue before this Court in this appeal. Apart from that, we note that the adjudicating authority has appreciated the factual basis and drafted the proposal made in the show cause notice, the correctness of which was tested by the Tribunal which was affirmed by the order passed by the adjudicating authority.*

Thus, we are convinced to hold that no questions of law, much less substantial questions of law, arises for consideration in this appeal.

Accordingly, the appeal is dismissed."

The present appeal is also on identical facts and concerns the very same premises where fire incident took place. Therefore, the above decision will squarely apply to the case on hand and the appeal stands dismissed.

Consequently, the application also stands dismissed.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.