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

ORIGINAL SIDE

CEXA/26/2024
IA NO: GA/2/2024
COMMISSIONER OF CENTRAL EXCISE HALDIA
VS
M/S. IMECO LTD

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 30th August, 2024

Appearance :
Mr. Bhaskar Prasad Banerjee, Adv.
Mr. Tapan Bhanja, Adv.
…for the appellant.

Mr. Nikunj Berlia, Adv.
Ms. Mosarat Reyaz, Adv.
…for the respondent.

The Court : This appeal by the revenue filed under Section 35G of the Central Excise Act, 1944 (the Act) is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata (the Tribunal) dated 18.9.2023.

The revenue has suggested the following substantial questions of law for consideration :

"i) Whether the Learned Tribunal was right and justified in allowing the appeal of the respondent when the issue of Constitutional validity of Rule 8(3A) of the Central Excise Rules, 2002 is pending before the Hon'ble Supreme Court?
ii) Whether without complying the statutory provisions of Rule 8(1) read with Rule 8(3) of the Central Excise Rules, 2002, can the respondent be permitted to clear their goods for subsequent periods?

iii) Whether during the period of default, the payment of duty by the respondent from Cenvat Cedit account is permissible under Rule 8(3A) of the Central Excise Rules, 2002?"

We have heard Mr. Tapan Bhanja, learned standing counsel for the appellant and Mr. Nikunj Berlia, learned counsel for the respondent.

In the instant case the necessity to answer the substantial questions of law could not arise in the light of the fact that a Corporate Insolvency Resolution Process was initiated against the respondent company and the National Company Law Tribunal by order dated 15th July, 2022 approved the resolution plan.

In such circumstances, in the light of the position of the Hon'ble Supreme Court in Ghanshyam Mishra & Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited & Ors., reported at (2021) 9 SCC 657, the proceedings initiated by the Excise Authorities cannot be proceeded further nor this appeal.

Accordingly, the appeal stands dismissed and the substantial questions of law as suggested by the revenue are left open.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das/