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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CEXA/47/2024
IA NO: GA/1/2024, GA/2/2024
COMMISSIONER OF SERVICE TAX, PRESENTLY KNOWN AS COMMISSIONER OF CGST AND CX, KOLKATA SOUTH COMMISSIONERATE
VS
M/S WEST BENGAL INDUSTRIAL DEVELOPMENT CORPORATION LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Dated: November 27, 2024.

Appearance :
Mr. Bhaskar Prosad Banerjee, Adv.
..for appellant
Mrs.Swapna Das, Adv.
Mr. Siddhartha Das, Adv.
....for respondent

The Court :- We have heard learned Counsel appearing for the parties.

There is a delay of 111 days in filing the appeal. As the delay has been properly explained, the delay is condoned. The application for condonation of delay being GA/1/2024 is allowed.

This appeal has been filed by the revenue under Section 35G of the Central Excise Act, 1944, challenging the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata in Service Tax Appeal No. 328 of 2011 dated 20th November, 2023. The revenue has raised the following substantial questions of law for consideration:-

i) Whether the order of the Learned Tribunal is erred in rejecting the demand of tax and allowed the appeal of the Respondent only on limitation, when the adjudicating authority had justified the demand by stating that the case originated from an audit exercise of the Department and the Respondent neither declared nor brought to the notice of the department the shortcomings for seeking clarification and took undue advantage by suppressing the facts with the intention of evading Service Tax ?

ii) Whether the Learned Tribunal erred in law and fact and is perverse inasmuch since the Respondent, being a Government entity and filing returns regularly, could be exonerated from the charge of suppression of facts, which is apparent from the adjudication order?

iii) Whether the Learned Tribunal erred in law and fact and is perverse since the Learned Tribunal itself admitted that the issue of cenvat credit should be remanded to the adjudicating authority but later on allowed the appeal on the issue of limitation itself without going into the merits?

The learned Tribunal considered the correctness of the order passed by the adjudicating authority namely, the Commissioner of Service Tax, Kolkata. The issue which mainly falls for consideration before the Tribunal was whether the show-cause notice could have been issued invoking the extended period alleging that the respondent/assessee suppressed the required details. The respondent/assessee is a Government entity working under the Ministry of Industries, Government of West Bengal. The learned Tribunal considered the fact that the assessee being a Government entity and that they have been filing returns regularly, there is nothing to assume that they have suppressed any fact so as to gain on account of non payment of service tax and by taking ineligible Cenvat credit as alleged by the revenue.

On thorough examination of the factual position, the learned Tribunal has recorded a conclusion that there is no reason for invoking the extended period of limitation. There is nothing brought on record by the revenue to show that respondent/assessee, which is a Government entity, had willfully suppressed facts before the authorities with the intention to gain on account of non-payment of service tax.

Thus, we find that the order passed by the learned Tribunal does not call for any interference.

Accordingly, the appeal stands dismissed.

Consequently, the stay application GA/2/2024 stands dismissed.

(T.S. SIVAGNANAM, CJ.)

(HIRANMAY BHATTACHARYYA, J.)

SN/GH.