OD-28

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

CEXA/13/2023
IA NO: GA/1/2023
COMMISSIONER OF CGST AND CX, HOWRAH COMMISSIONERATE
VS
M/S. BEEKAY STEEL INDUSTRIES LIMITED K.K.MAITY INDRANIL BANERJEE

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 22nd May, 2024.

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

The Court :- This appeal filed by the revenue under Section 35G of the Central Excise Act, 1944 (the Act) is directed against the final order passed by the Customs, Excise, Service Tax Appellate Tribunal, Eastern Zonal Bench (the Tribunal) in Appeal No. 76252 of 2018 dated 20.04.2023. The revenue has raised the following substantial questions of law for consideration :

(i) Whether the Learned Tribunal has committed gross error of law by allowing the appeal of the respondent when the respondent has liable to pay the duty under Section 3A of the Central Excise Act, 1944 but paid in terms of Section 3 of the Central Excise Act.

(ii) Whether the permission granted by the erstwhile Commissioner to pay duty under Section 3 have any statutory value when admittedly the respondent is liable to pay duty under Section 3 of the said Act.

(iii) Whether issuance of Show Cause Notice is time barred when the respondent has not disclosed their liability to pay duty under Section 3A and is discharging duty under Section 3 of the said Act which was revealed after verification by the department.

(iv) Whether the ingredients of Section 11A(1) of the Central Excise Act is available in this case or not ?

The respondent/assessee assailed the correctness of the order passed by the Commissioner, Central Excise (GST & CX), Howrah Commissionerate demanding Central Excise duty from the period of August 1997 to July 1998 in terms of Section 11A of the Central Excise Act, 1944 read with the provisions of the Central Excise Rules, 1944 along with interest thereon under Section 11AA of the Act and levying penalty under the various provisions of the Act and the Rules.

The learned Tribunal has elaborately considered the factual position which in our view has been rightly done by the learned Tribunal which would preclude the department from maintaining a challenge to the order passed by the learned Tribunal. It is not in dispute that department raised separate proceedings against the assessee for the self-same period and a show cause notice was issued alleging that the assessee had failed to pay the duty under Section 3A of the Act, but paid the duty under Section 3 on both allow and non-alloy products thereby causing loss of revenue and by allowing its buyers of final products to avail excess MODVAT credit. It was further alleged that loss of revenue was recoverable from the assessee in terms of the proviso to Section 11A of the Act with interest with interest under Section 11AB of the Act and penalty under Rule 173Q and the Rules read with Section 11AC of the Act. The demand which was raised in the show cause notice dated 2.4.2002 was dropped by passing order in original against which appeals were filed before the Tribunal by the department as well as the assessee. The appeals were disposed of on 11.12.2008 setting aside the order in original and remanding the matter for de novo adjudication. In such proceeding the adjudication authority again dropped the demand by order in original on 16.10.2010 and held the assessee has rightly discharged the duty liability under Section 3 of the Act. Against the said order in original the department appeals and cross-appeals were filed by the department and which have been disposed of by final order dated 27.2.2023, affirming the de novo adjudication order. Thus the issue involved in this appeal is covered by order passed by the Tribunal in assessee’s own case dated 27.2.2022. Apart from the learned Tribunal had rightly noted that the Commissioner had granted permission vide letters dated 29.03.1997 and 20.04.1998. This aspect of the matter is not in dispute as it has been admitted in the order passed by the Commissioner dated 29.12.2017, wherein the Commissioner would observe that permission was granted by the Commissioner in response to the request made by the assessee and in the interest of revenue to eliminate the inconvenience in practical operation with the condition that concession would be reviewed at the end of the final order on the basis of the revenue performance of the assessee. There is nothing on record to indicate that there was a review of the matter and the permissions granted by the department vide letters dated 23.09.1997 and 20.04.1998 remained intact.

Thus, we find that the learned Tribunal granted relief to the assessee taking note of the undisputed facts. With regard to notification of the extended period of limitation, the facts clearly show that the issue with regard to payment of duty under Section 3 of the Act had attained finality after the order of the learned Tribunal dated 27.02.2023 and in such circumstances, the question of applying the extended period of limitation under the Rules would not arise. Consequently, the penalty is also not imposable.

Thus, we find that the Tribunal on considering the facts of the assessee's case has granted relief and we find no question of law, much less substantial questions of law, arising for consideration.

The appeal fails and is dismissed.

The stay application being GA/1/2023 is also dismissed.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH/SN.