OD – 33

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

ORIGINAL SIDE

CEXA/17/2023
IA NO: GA/1/2023

M/S SAUMYA MINING PVT LTD.
VS
COMMISSIONER OF CGST AND CX
KOLKATA NORTH COMMISSIONERATE

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 31st January, 2024

Appearance :
Mr.Akash Dutta, Adv.
Mr.Subhajit Roy, Adv.
Mr.Aditya Dutta, Adv.
...for the appellant.

The Court : We have directed Mr. K.K. Maity, learned senior standing counsel to accept the notice for the respondent/department. The appearance of the learned senior standing counsel be regularised and the fee will be submitted by the learned senior standing counsel will be honoured.

This appeal filed by the assessee under Section 83 of the Finance Act, 1984 read with Section 35G of the Central Excise Act, 1944 challenging the order dated 28th July, 2023 passed by the Central Excise and Service Tax Appellate Tribunal, Kolkata in Service Tax Appeal No.128 of 2009 and Cross-Appeal No.209 of 2009. The assessee has raised the following grounds for consideration :

"(i) FOR THAT the Learned Tribunal with a closed mind while hearing the case of the appellant on 28.07.2023, dismissed the appellant's appeal solely on the ground of not being able to keep alive the Bank Guarantee of Rs.1.25 crores as ordered by the Hon'ble Calcutta High Court vide its Order dated 06.09.2012.

(ii) FOR THAT the Learned Tribunal while passing the impugned order ought to have considered that since 06.09.2012 from the date of the Hon'ble High Court's Order till 28.07.2023 a long period of almost 11 years had already elapsed for no fault of the appellant."

We have elaborately heard the learned advocates appearing for the parties.

The assessee had filed an appeal before the Tribunal challenging an order passed by the Commissioner of CGST and CX, Kolkata North Commissionerate and the respondent/department had also filed a cross-appeal and the appeals were taken on file by the Tribunal in the year 2009. The Tribunal passed an order on 19th April, 2010 directing the appellant to pre-deposit a sum of Rs.2 crores as a condition precedent for stay of recovery of the balance claim from the appellant during the pendency of the appeal before the learned Tribunal. The appellant had challenged the said order by filing a writ petition before this Court in WP No.14712(W)/2010. The said writ petition was disposed of by directing the appellant to furnish a bank guarantee and keep the same renewed couple with a direction to the learned Tribunal to dispose of the appeal preferably within a period of six months. The appellant had kept the bank guarantee alive from the year 2010 to 2016. However, the appeal was not taken up for disposal in terms of the directions issued by the learned Writ Court and it is stated that the appeal was listed for haring after a period of almost 11 years. In the interregnum the financials of the appellant company had grossly dwindled and since there was an uncertainty as to when the appeal will be taken up for hearing, it appears that the appellant did not renew the bank guarantee beyond 2016. When the appeal was taken up after 11 years by the learned Tribunal, the same has been dismissed by the impugned order solely on the ground that the appellant did not comply with the order passed by the learned Writ Court directing furnishing of a bank guarantee and keep the same to be alive. To be noted that in the writ petition there were twin directions given by the learned Writ Court and the second of which was directing the learned Tribunal to dispose of the writ petition within a period of six months. This direction has not been complied with. In any event, the order passed by the learned Writ Court was in the nature of an interim order till the appeal is heard and disposed of so as to give a protection to the appellant from recovery of the balance amount of service tax. Therefore, the appeal ought to be decided on merits and in accordance with law and cannot be dismissed on the grounds stated by the learned Tribunal.

For the above reasons, the appeal is allowed and the order passed by the learned Tribunal is set aside and the appeal and the cross-appeal are restored to the file of the learned Tribunal to be heard and decided on merits and in accordance with law.

In view of the above, the appeal and the connected application stand disposed of.

(T.S. SIVAGNANAM)
(CHIEF JUSTICE)

(SUPRATIM BHATTACHARYA, J.)

S.Das/