OD – 4

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

ORIGINAL SIDE

CEXA/20/2023
IA NO: GA/1/2023

COMMISSIONER OF CENTRAL EXCISE BOLPUR
VS
M/S KIC METALIKS LTD

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 24th May, 2024

Appearance :
Mr.Kaushik Dey, Adv.
Ms.Aishwarya Rajshree, Adv.
..for the appellant.

Mr.Rajarshi Chatterjee, Adv.
Mrs.Sumana Sahani, Adv.
…for the respondent.

The Court : This appeal filed by the revenue under Section 35G of the Central Excise Act, 1944 is directed against the order passed under Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (Tribunal) in Excise Appeal No.558 of 2010 dated 29.5.2023.

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

"a) Whether the availment of Cenvat Credit for clearance of rejected Capital Goods along with their manufactured product by respondent is irregular. Since, there were no

provisions of the same more specifically in Rule 8 and Rule 8(3A) of the Cenvat Credit Rules, 2002 for payment of Excise Duty at the time of Removal of each consignment till the date the assessee pay the outstanding amount including the interest thereon ?

b) Whether the Respondent is entitled to Cenvat credit for clearance of rejected Capital Goods alongwith their manufactured product?

c) Whether the Learned Tribunal erred in law in not holding that once the SLP has been filed before the said Hon'ble Supreme Court of India and the same has entertained, the Judgment of the Hon'ble High Court is in Jeopardy and subject matter of his unless determined by the last court, cannot be said to have attained finality in view of the settled principles of law as held by the Hon'ble Apex Court?

d) Whether the Learned Tribunal erred in law in not holding that statute of the issue for the relevant period is still in vogue as the order of different High Court's against the revenue is litigated before the Hon'ble Supreme Court and the same are still Pending?"

We have heard Mr. Kaushik Dey, learned senior standing counsel, assisted by Ms. Aishwarya Rajshree, learned counsel for the appellant and Mr. Rajarshi Chatterjee, learned counsel for the respondent.

The learned Tribunal has also allowed the assessee's appeal following the decision by which the portion of Rule 8(3A) of the Central Excise Rules, 1944 was struck down by the High Court of

Gujarat in the case of Union of India Vs. Indsur Global Ltd. The revenue had filed the said judgment before the Hon'ble Supreme Court in Special Leave to Appeal No.16523 of 2015 and by order dated 24.9.2015 the Hon'ble Supreme Court has stayed the judgment of the High Court of Gujarat in the case of Union of India Vs. Indsur Global Ltd. The matter is now pending before the Hon'ble Supreme Court. Therefore, in our view, the best course open would be for the Tribunal to wait for the decision of the Hon'ble Supreme Court and then take a decision in the matter.

For the above reasons, the appeal is allowed. The order passed by the learned Tribunal is set aside and the appeal is restored to the file of the learned Tribunal and the matter shall be kept pending and taken up for consideration and decided after the judgment of the Hon'ble Supreme Court in Special Leave to Appeal No.16523 of 2015. The substantial questions of law are left open.

In the result, the appeal is disposed of and the connected application stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

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