ORDER OD – 14

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CENTRAL EXCISE)
ORIGINAL SIDE

CEXA/23/2023
IA NO: GA/1/2024
COMMISSIONER OF CENTRAL EXCISE, KOLKATA – IV
VERSUS
M/S. ORIENT STEEL AND INDUSTRIES LTD.

BEFORE :
THE HON'BLE CHIEF JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 24th April 2024.

Appearance:

Mr. Bhaskar Prosad Banerjee, Advocate
Mr. Tapan Bhanja, Advocate
... for the appellant.

This appeal filed by the Central Excise Department under Section 35G(1) of the Central Excise Act, 1944 is directed against the final order passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata dated 02.06.2023 being Final Order No.75575 of 2023. The revenue has raised the following substantial questions of law for consideration:-

I. *Whether the Learned Tribunal failed to appreciate that the respondent has contravened the provisions of Rules 9(1), 173F and 173G read with Rule 96ZP of Central Excise Rules, 1944 and Rules 3(1) and 4(1) of the provisions of Hot Rolling Steel Mills Annual Capacity Determination Rules, 1997 by way of discharging their duty liability so fixed on wrong declaration of Annual Production with deliberate and mal-intention to evade Central Excise duty which resulted a short* *levy of Rs.1,05,00,716/- for the period from September, 1997 to March, 2000?*

II. *Whether the Learned Tribunal has committed gross error by dismissing the appeal of the revenue without appreciating that under compound levy scheme the assessee was required to discharge their duty liability under Section 3A of the Central Excise Act, 1944 but the said assessee had suppressed the actual production during the period from September, 1997 to March, 2000 resulting short levy of Central Excise duty?"*

We have heard Mr. Bhaskar Prosad Banerjee, learned senior standing counsel, assisted by Mr. Tapan Bhanja, learned advocate for the appellant/department and carefully considered the materials placed on record. The revenue was in appeal against an order passed by the Commissioner of Central Excise, Kolkata – IV Commissionerate, by which the Commissioner after considering the factual position and after due verification held that the respondent has not cleared the goods without payment of duty, but this factual finding could not be shown to be wrong by the department even before the Tribunal or before us. In any event, we find no substantial question of law, much less substantial question of law, arising for consideration in this appeal. The appeal stands dismissed. The connected application also stands closed.

(T. S. SIVAGNANAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)

sm / S. Kumar