COURT NO.1

HIGH COURT OF SIKKIM : GANGTOK
Record of Proceedings

TAX APP. No. 03/2024

COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX, SILIGURI — APPELLANT (S)

VERSUS

M/S ZYDUS HEALTHCARE — RESPONDENT (S)

For Appellant : Ms. Sangita Pradhan, Deputy Solicitor General of India with Ms. Sittal Balmiki and Ms. Natasha Pradhan, Advocates.

For Respondent : Mr. Rahul Tangari, Ms. Gita Bista and Mr. Dipendra Chettri, Advocates.

Date: 24/04/2025

CORAM:
HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

...

ORDER : (per the Hon'ble, the Chief Justice)

This statutory appeal has been filed by the Commissioner of Central Excise, Customs and Service Tax, Siliguri, against a final order dated 28th February, 2024, passed by the learned Customs, Excise and Service Tax Appellate Tribunal, Kolkata, in Excise Appeal No. 657 of 2010. The learned CESTAT has held therein that the respondent is entitled to a special rate of value addition @ 73.5%, which is based on the actual value of the cost of raw materials and inventory reflected in the audited financial statement. According to the appellant, this observation of the learned Tribunal that the respondent is entitled to special rate of value addition @ 73.5%, is incorrect and bad in law.

We now refer to section 35G(1) of the Central Excise Act, 1944, which reads as follows:-

> "35G. Appeal to High Court. —(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law."

A bare perusal of the above provision of law clearly reveals that no appeal shall lie before the High Court from any order passed by the learned Tribunal (on or after the 1st day of July, 2003) if it is an order which relates among other things to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment.

Since this matter relates to valuation, we are of the view that this High Court has no jurisdiction to entertain, try and determine the issue as sought to be raised by the Commissioner of Central Excise, Customs and Service Tax, Siliguri.

In such circumstances, we grant liberty to the Commissioner of Central Excise, Customs and Service Tax, Siliguri, to approach the Hon'ble Supreme Court of India for redressal of their grievances, if any, in accordance with law.

The Tax App. No. 03/2024, stands accordingly disposed of.

(Meenakshi Madan Rai)
Judge

(Biswanath Somadder)
Chief Justice

jk/ami/sl