

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

PRESENT :

THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM

And

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

CEXA/11/2025
IA NO: GA/1/2025

COMMISSIONER OF SERVICE TAX KOLKATA PRESENTLY KNOWN AS
COMMISSIONER OF CGST AND CX KOLKATA SOUTH CO
VS
M/S ELECTRO STEEL CASTING LTD

For Appellant : Mr. Bhaskar Prasad Banerjee, Advocate
Mr. Kaustuv Kanti Maiti, Advocate

For Respondent : Mr. Niraj Baheti, Advocate
Ms. Sreeja Chakraborty, Advocate

Heard on : May 7, 2025

Judgment on : May 7, 2025

1. **T.S. SIVAGNANAM, CJ** : This appeal filed by the revenue under Section 35G of the Central Excise Act, 1944 (the Act) is directed against the order passed by the Learned Customs, Central Excise & Service Tax Appellate Tribunal, East Zonal Bench, Kolkata (the Tribunal), in Service Tax Appeal No. 76415 of 2014 dated 27.09.2024.
2. The assessee filed the said appeal before the learned Tribunal challenging the order in original dated 25.07.2014 passed by the Service Tax Commissionerate, Kolkata. By the said order the demand of service tax

made in the show cause notice was confirmed in exercise of the power under Section 73(2) of the Finance Act, 1994 (as amended), the demand of cenvat credit under Proviso to Section 73(2) of the Finance Act, 1994 as amended read with Rule 14 of the Cenvat Credit Rules, 2004 was confirmed and interest was directed to be paid and penalty was also imposed. Before the learned Tribunal, there were six issues which were taken up for consideration. The six issues have been tabulated by the learned Tribunal in pages 2 to 4 of the impugned order.

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

(i) Whether the findings made by the Learned Tribunal in respect of issue no.3, as stated in internal page 3 of the Learned Tribunal's order, is perverse, without proper reasoning, in violation of natural justice, and contrary to the records inasmuch as the Learned Tribunal decided the issue by holding that the Adjudicating Authority had not considered the conciliation report submitted by the respondent, but on the other hand, the Adjudicating Authority in Paragraph 3.4.3 of the adjudication order has considered the reconciliation statement of the respondent and recalculated the outstanding amount payable by the respondent, which is reduced from Rs.30,88,681/- to Rs.18,95,028/-, and as such the findings arrived by the Learned Tribunal regarding nonproduction of any other evidence and/or there is no suppression on the part of the respondent cannot be sustained in Law?

(ii) *Whether in respect of the decision rendered in issue no.4, as stated in internal page 3 of the Learned Tribunal's order, by the Learned Tribunal is perverse, without proper reasoning, contrary to facts and law, in violation of natural justice, since after the receipt of reply to the Show Cause, the Adjudicating Authority in exercising its powers under Section 72A of the Finance Act 1994 has directed Special Audit by a reputed Auditor (in terms of paragraph 3.5.3.1 of Adjudication Order) and the said Special Audit Report forms part of the evidence of the case before the Adjudicating Authority and that the Adjudicating authority in consideration of the Audit report and the materials submitted by the Respondent had recalculated the liability of Service Tax due from the respondent from the total demand of Rs.21,26,04,779/- as raised in the show cause notice arising on the ground of the difference of taxable value between Trial Balance and ST-3 Return demand to Rs.3,53,30,714/- and as such the order of the Learned Tribunal cannot be sustained in law?*

(iii) *Whether the order of the Learned Tribunal is perverse and contrary to law, in violation of natural justice, and contrary to the admitted records since the Learned Tribunal gave full credence to the reconciliation statement certified by the chartered accountant submitted by the respondent but on the other hand the Learned Tribunal totally ignores the Special Audit Report, submitted by a registered Chartered Accountant, namely M/s. Singhania Agarwal & Co., appointed under*

Section 72A of the, Finance Act, 1994 by the adjudicating authority, to justify the veracity of the allegation' by the appellant and to examine certain aspects of the disputed issue and as such the order of the Learned Tribunal cannot be sustained?

4. We have heard Mr. Bhaskar Prosad Banerjee, learned senior standing Counsel assisted by Mr. Kaustav Kanti Maiti for the appellant and Mr. Niraj Baheti, learned Advocate assisted by Ms. Sreeja Chakraborty, learned Advocate for the respondent.
5. From the above substantial questions of law raised by the revenue, it is seen that the revenue has challenged the order passed by the learned Tribunal only on two issues out of the six issues. The two issues which are the subject matter of challenge in this appeal are as follows:

<u>Sl No.</u>	<u>Issue involved</u>	<u>Period</u>	<u>Duty Demanded</u>
3.	Alleged short payment of tax by following realization basis as against the accrual basis prescribed under the POT Rules by comparing the "gross amount billed and "gross amount received" as reflected in the ST 3 returns of the Appellant.	July 2011 to March 2012	18,95,028

4.	Alleged short-payment of tax based on an improper comparison of select GL Codes appearing in the Trial Balance of the Appellant vis-à-vis the income reflected in the ST 3 returns for the relevant period.	October 2007 to March 2012	3,53,30,714
----	---	----------------------------	-------------

6. We have elaborately heard learned Advocates for both the parties and carefully perused the materials placed on record and the reasons assigned by the adjudicating authority and that of the learned Tribunal.
7. The finding rendered by the learned Tribunal on issue no.3 (as mentioned above) is contained in paragraph 16 of the impugned order.
8. On going through the finding recorded by the learned Tribunal, we find that the learned Tribunal has examined the factual position and observed that the adjudicating authority has not given any finding contrary to the reconciliation report submitted by the assessee. Furthermore, the Department has not produced any other evidence to substantiate short payment of further demand on this count and only a sum of Rs.18,128/- needs to be confirmed on this score which is the demand of service tax payable under the category 'Business Auxiliary Service' and the remaining demand was set aside.

9. On perusal of the adjudication order, we find that the assessee was issued a show cause notice for which the assessee submitted their reply and the adjudicating authority disagreed in arriving at a taxable value of the issue and to remove the same the adjudicating authority decided to appoint a registered chartered accountant under Section 72A of the Finance Act, 1994 to justify the veracity of the allegation. Accordingly, a chartered accountant was appointed and the terms of reference were specified in the order passed by the adjudicating authority.
10. In paragraph 3.5.3.1 of the order of adjudication dated 25.07.2014, the terms of special audit has been set out. On perusal of the same, it is seen that the special audit was for a specific purpose and the terms were restricted and most of it was to verify the G.L. Codes. The special auditor submitted a report on 17.12.2013 which report has also been extracted in the adjudication order. Having thought fit to appoint a special auditor, the adjudicating authority was required to examine the special audit report and in case he disagrees with the findings recorded by the special auditor, the adjudicating authority is required to record reasons by clearly setting out the factual position. As pointed out by the learned Tribunal, this aspect has not been complied with and there is no reasoning by the adjudicating authority upon receipt of the special audit report. Therefore, we are of the view, that the learned Tribunal was justified in observing that the adjudicating authority has not given any finding to the contrary of the reconciliation report submitted by the assessee which was taken note of

during the special audit. Apart from that, we find the matter is entirely factual and no substantial question of law emerges for consideration on this issue.

11. The next issue is with regard to the alleged short payment of tax based on improper comparison of select G.L. Codes appearing in the Trial Balance of the assessee *vis-à-vis* the income reflected in the ST 3 returns for the relevant period. In fact, this issue also is covered in the special audit. The learned Tribunal on this issue observed that the assessee has submitted a detailed reconciliation report duly certified by the chartered accountant along with the reply to the show cause notice and upon perusal of the report the Tribunal was satisfied that there was no difference in the income reflected in the Trial Balance and the income reflected in the ST 3 returns and also pointed out that the adjudicating authority has not given any finding on the return in the order of adjudication. This aspect also is entirely factual and we find no substantial question of law arises for consideration. Therefore, the contention of the revenue that the order passed by the learned Tribunal suffers from perversity and does not fit for acceptance.
12. Leaving aside the above two issues, if we have to consider as to whether the adjudicating authority was justified in invoking the extended period of limitation under Section 73(1) of the Act, we have to consider as to whether there was any material with the adjudicating authority to show that there was willful mis-statement and suppression of material facts in the statutory

returns filed by the assessee with an intent to evade payment of tax. The adjudication authority in paragraph 4.0 deals with this issue. On perusal of the said paragraph, it is seen that the adjudicating authority has virtually extracted the statutory provision which sets out the circumstances under which the extended period of limitation could be invoked. However, merely by extracting the statutory provision would not suffice as the assessing officer has to indicate as to how the assessee resorted to willful mis-statement and suppression of material facts in their statutory returns with an intent to evade payment of tax.

13. This being conspicuously absent, the question of invoking the extended period of limitation would not arise. Apart from that, on going through the order of adjudication, it is seen that all data was culled out from the assessee's books and the returns which have been filed and there was no extraneous material based on which the adjudicating authority had initiated the process by issuing the show cause notice dated 22.07.2017.
14. Therefore, in the facts and circumstances of the case on hand, there was no material brought on record by the adjudicating authority to establish that the assessee had made willful mis-statement and suppressed the material facts with an intent to evade payment of tax.
15. In the light of the above findings, the entire order passed by the adjudicating authority was liable to be set aside and the learned Tribunal was justified in doing so.

16. For the above reasons, we hold that no question of law much less substantial question of law arises for consideration in this appeal.

17. Accordingly, the appeal fails and is dismissed.

18. The connected application is also dismissed.

(T.S. SIVAGNANAM)

CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)

