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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CEXA/14/2025
IA NO: GA/1/2025, GA/2/2025

COMMISSIONER OF SERVICE TAX KOLKATA, Presently known as
COMMISSIONER OF CGST & CX, KOLKATA SOUTH COMMISSIONERATE
VS
M/s. WACKER METROARCH CHEMICALS PVT. LTD.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 17th July, 2025.

Mr. Uday Shankar Bhattacharya, Adv.
Ms. Ekta Sinha, Adv.
…for appellant.
Mr. Saurabh Bagaria, Adv.
Mr. Indranil Banerjee, Adv.
Mr. Subrata Mukherjee, Adv.
…for respondent.

The Court : This is an appeal filed by the revenue under section 83 of the Finance Act, 1994 challenging the order dated 10.10.2023 passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (Tribunal) in Service Tax Appeal No.127 of 2012.

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

a) Why the amount of service tax to the tune of Rs.1,09,59,738.00, Education Cess to the tune of Rs.2,19,195.00 and Secondary & Higher Education Cess to the tune of Rs.1,08,434.00 should not be demanded and recovered from them under proviso to section 73(1) of the Finance Act, 1994 as amended ?

b) Why interest on the demanded at (a) above at the appropriate rate should not be recovered from them under Section 75 of the Finance Act, 1994 as amended ?

c) Why appropriate penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act 1994 as amended for suppression of the fact as described hereinbefore as well as violation of the provisions of Section 66 and 68 of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules, 1994 as amended and Rule of the Export of Service Rules, 2005 as amended ?

d) Why appropriate penalty should not be imposed upon them under the provisions of section 77 of the Finance Act 1994 as amended for failing to register with the Department for providing the said `Business Auxiliary Service' as defined under Section 69 of the Finance Act 1994 as amended read with Rule 4 of the Service Tax Rules 1994 as amended ?

There is a delay of 327 days in filing the appeal. Though the explanation offered is not fully satisfactory, considering the facts of the case as also the objection raised by the learned Advocate appearing for the respondent/assessee that this appeal is below the monetary limit fixed by the Central Board, we exercise discretion and condone the delay in filing the appeal. The condone delay application, IA NO: GA/1/2025, is allowed.

As could be seen from the impugned order passed by the learned Tribunal, the demand of service tax including cess is Rs.1,12,87,367/-. If that be the case, the matter is well below the monetary limit fixed in the Circular issued by the Board and the revenue cannot pursue this appeal before this Court.

Accordingly, the appeal stands disposed of on the ground of low tax effect and, consequently, the questions of law suggested are left open.

The stay application, IA NO: GA/2/2025, stands disposed of.

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(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

SN/pkd.
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