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ORDER SHEET
CEXA/30/2024
IA NO: GA/1/2024
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CENTRAL EXCISE)
ORIGINAL SIDE

COMMISSIONER OF CGST AND CX, HOWRAH COMMISSIONERATE
VS
M/S. STEEL PRODUCTS LIMITED

BEFORE:
The Hon'ble JUSTICE RAJARSHI BHARADWAJ
AND
The Hon'ble JUSTICE UDAY KUMAR
Date: 24th November, 2025.

Appearance:
Mr. Bhaskar Prasad Banerjee, Adv.
Mr. Tapan Bhanja, Adv.
...for the appellant

Mr. N.K. Chowdhury, Adv.
Mr.Nilotpal Chowdhury, Adv.
Mr. Prabir Bera, Adv.
...for the respondent

The Court: Learned counsel appearing for the Central Excise Department suggests the following substantial questions of law by filing the appeal under Section 35G of the Central Excise Act, 1944.

> "A. Whether the process undertaken by the respondent amount to manufacture on which appropriate duty of excise is payable in terms of section 2(f)(ii) of the Central Excise Act,

1944 read with Note 4 of the Chapter 73 of the First Schedule to Central Excise tariff Act, 1985 ?

B. Whether the Tribunal was justified in holding assessee is not a manufacturer in violation of the mandate as per Note 4 of the Chapter 73 of the First Schedule to the Central Excise Act, 1985 (5 of 1986), where it was stipulated that in relation to products of this chapter, the process of galvanization shall amount to "Manufacture" ?

C. Whether in the facts and circumstances of the instant case the respondent is entitled to avail the benefit of Notification No.08/2005-ST dated 01.03.2005 and Notification No.214/86-CE Dated 25.03.1986 ?

D. Whether the order passed by the Learned Tribunal is otherwise perverse, bad in law and contrary to the findings of the adjudicating authority and a reasonable one ?

Section 35G of the Central Excise Act, 1944 speaks of appeal to High Court which is quoted below:-

"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.

(2) The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be –

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;

(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

[(2A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.]"

The Central Excise Act, 1944 also speaks of appeal to Supreme Court which is quoted below:-

"35L. Appeal to Supreme Court. – [(1)] An appeal shall lie to the Supreme Court from –

[(a) any judgment of the High Court delivered –

(i) in an appeal made under section 35G; or

(ii) on a reference made under section 35G by the Appellate Tribunal before the 1st day of July, 2003;

(iii) on a reference made under section 35H, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or]

(b) any order passed [before the establishment of the National Tax Tribunal] by the Appellate Tribunal 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 purposes of assessment.

[(2) For the purposes of this Chapter, the determination of any question having a relation to the rate of duty shall include the determination of taxability or excisability of goods for the purpose of assessment.]"

On perusal of Sections 35G and 35L of the Central Excise Act, 1944, in our opinion, this appeal should be preferred before the Hon'ble Supreme Court under Section 35L Sub-section (2) of the Act.

The appeal preferred by the department is dismissed.

Leave is granted to the learned advocate-on-record of the appellant to receive certified copy of the tribunal from the department and replace it with a photocopy of the same.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

B.Pal