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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Central Excise]

ORIGINAL SIDE

CEXA/18/2025
IA NO: GA/1/2025, GA/2/2025
COMMISSIONER OF CENTRAL EXCISE HALDIA COMMISSIONERATE
VS
MS INDIAN OIL CORPORATION (REFINERY DIVISION)

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 5th August, 2025

Appearance :
Mr. Uday Shankar Bhattacharya, Adv.
Mr.Tapan Bhanja, Adv.
…for the appellant.

The Court : This appeal filed by the department under section 35G of the Central Excise Act, 1944 is directed against the final order dated 21.11.2023 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal) in Excise Appeal No.70099/2013.

The department has suggested the following substantial questions of law for consideration :

"i) Whether in terms of Rule 2(1) of the Cenvat Credit Rules, 2004 the services for which Wharfage Landing Charge is paid to Port Trust Authority is eligible as 'Input Service' when the said service is provided at a place beyond the place of removal (i.e. factory gate/depot) and the same has no direct or indirect nexus in or in relation to the manufacture of the finished goods ?

ii) Whether the respondent is legible for the service tax credit with respect tl Wharfage Charge when the same were provided beyond the palce or removal?

iii) Whether in terms Rule 14 of Cenvat Credit Rules, 2004 the revenue was justified in initiating the proceeding for recovery of irregularly availed cenvat credit when there is no mechanism to recovery of Cenvat Credit from the Input Service Distributor who merely passes the Cenvat Credit to its units?

iv) Whether the decision in the case of Commissioner, Service Tax, Ahmd. Vs. Godfrey Philips India Ltd. reported in 2009 (14) STR 375 (Tri-Ahmd) relied upon by the Learned Tribunal is applicable to the present facts of the case?"

We have heard Mr. Uday Shankar Bhattacharya, learned senior standing counsel assisted by Mr. Tapan Bhanja, learned advocate appearing for the appellant/department. Though the respondent has been served, none appears for the respondent/assessee.

Before we examine the merits of the matter, the first hurdle which the department has to cross is on account of delay in filing the appeal. The appeal has been filed with the delay of 393 days. The impugned order was passed by the learned Tribunal on 21.11.2023 and the copy was received by the appellant/department on 6.12.2023 and the appeal memorandum was presented before this Court on 1.7.2025. In this process a delay of 573 days had occurred. After deducting 180 days, the time given for preferring the appeal in the Act, a delay has been computed at 393 days.

We have carefully perused the averments set out in the affidavit filed in support of the application [GA/1/2025] and elaborately heard the learned senior standing counsel for the appellant/department.

The affidavit proceeds to blame two of the officers, one of whom is in the rank of Commissioner and he was the Commissioner in charge at Haldia Commissionerate at the relevant point of time. Apart from that, the two other officers have also been named in the affidavit. What is interesting to note is that the department took steps for preferring the appeal only after the respondent/assessee filed an application under the Right to Information Act, 2005 (RTI Act) on 17.4.2025 requesting for providing information as to whether the impugned order passed by the Tribunal dated 21.11.2023 has been accepted by the department. From paragraph 4 upto paragraph 15 the affidavit proceeds to hold certain officers responsible for the delay. In paragraph 17 the department would state after going through the impugned order dated 21.11.2023 the department put up the matter before the concerned section to ascertain the feasibility of preferring the appeal against the impugned order and the concerned section ascertained that there is sufficient ground for preferring the appeal and thereafter the department put up the matter before the competent authority for perusal and necessary approval for preferring the appeal. The said paragraph 17 is absolutely bereft of particulars and no dates have been given as to when the impugned order was examined by the appropriate authority of the department as to when they formed an opinion that it is a fit case for preferring the appeal. Paragraph 18 states that after having necessary approval from the competent authority, the department on 18.6.2025 engaged a panel of counsel for taking steps to prefer the appeal against the impugned order. Once again this paragraph is also bereft of any particulars as to on what date an approval was granted by the competent authority to engage a counsel.

Therefore, we are of the view that the delay which is inordinate has not been explained rather the department appears to shift the blame on certain officers who are no longer holding the charge of the concerned department and it is also not clear as to whether those officers are aware of the facts that their names have been mentioned in the affidavit filed by the department which would prima face show that those officers have been blamed for the delay. In any event, the explanation offered by the department for the inordinate delay apart from being devoid of any particulars, cannot connote sufficient cause for exercising any discretion in favour of the appellant/department.

Accordingly, the application [GA/1/2025] is dismissed.

Consequently, the appeal stands rejected. The application [GA/2/2025] stands dismissed. The substantial questions of law suggested by the department are left open.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

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