ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CENTRAL EXCISE)
ORIGINAL SIDE

CEXA/54/2024
IA NO: GA/1/2024, GA/2/2024

COMMISSIONER OF SERVICE TAX, KOLKATA
VS
M/S. SUBHAS PROJECT AND MARKETING LIMITED

BEFORE:
The Hon'ble JUSTICE RAJARSHI BHARADWAJ
AND
The Hon'ble JUSTICE UDAY KUMAR
Date: 16th December, 2025.

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

Mr. Somak Basu, Adv.
Mr. Swagato Kabiraj, Adv.
…for the respondent

The Court: We have heard learned Advocates on either sides.

There is a delay of 200 days in filing the appeal. We are satisfied with the explanation offered for not preferring the appeal within the time. Therefore, the delay is condoned. The application (GA/1/2024) is allowed.

Learned counsel appearing for the appellant/central service tax department suggests the following substantial questions of law by filing the appeal under Section 35G of the Central Excise Act, 1944.

> *"a) Whether the Learned Tribunal violated the basic principles of law and the principles of natural justice by not providing proper and adequate reasons in dismissing the appeal of the*

appellant when substantial question of law and fact has been raised by the appellant ?

b) Whether the Learned Tribunal erred in fact and law in failing to adjudicate that the services rendered by the respondent were chargeable prior to 01.06.2007 and the service rendered by the respondent being in the nature of erection, commission or installation service, commercial or industrial construction service or construction of complex service, being taxable for which the respondent was registered prior to introduction of Works Contract Service ?

(c) Whether the order of the Learned Tribunal is in violation of the principles of the natural justice since no reasoning has been provided with regard to the legal issue raised by the appellant that when for the period of 01.06.2007 to 31.03.2009, after introduction of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 the respondent was to exercise the option for composite scheme for payment and which has not been done by the respondent and there is no decision on the legal issue raised in this regard ?

d) Whether the Learned Tribunal erred in law in not holding that the said circular no. 80/10/2004-ST dated 17.09.2004 has been superseded by Circular No.96/7/2007-ST dated 23.08.2007?

e) Whether the Learned Tribunal erred in law in not holding that service provider who paid service tax prior to 01.06.2007 for the taxable service, namely, erection, commissioning or installation service, commercial or industrial construction service or construction of complex service and is not entitled to change the classification of the single composite service for the purpose of payment of service tax on or after 01.06.2007?"

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. The connected application (GA/2/2024) also stands 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.)

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