

OD - 25

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

ORIGINAL SIDE

CEXA/15/2023
IA NO: GA/1/2023
EMARS MINING AND CONSTRUCTION PVT LTD
VS
COMMISSIONER OF CGST AND ANR.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 21st March, 2025

Appearance :
Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Avra Mazumder, Adv.
Mr. Amitabha Mitra, Adv.
Ms. Alisha Das, Adv.
Ms. Sucheta Sharma, Adv.
Ms. Elina Dey, Adv.
Mr. Kausheyo Roy, Adv.
..for the appellant.

Mr. Vipul Kundalia, Sr. Adv.
Mr. Tapan Bhanja, Adv.
Mr. Anindya Kanan, Adv.
Mr. Dhirodatto Chaudhuri, Adv.
..for the respondent.

The Court : This appeal has been filed by the assessee under Section 35G of the Central Excise Act, 1944 (the Act) challenging the correctness of the order dated 15th January, 2020 passed by the Customs, Excise and Service Tax Appellate

Tribunal, Kolkata, Eastern Zonal Bench in Service Tax Appeal No.194 of 2012.

The assessee has raised the following the substantial questions of law :

"(a) Whether in the facts and circumstances of the case, the separate and distinct services rendered by the appellant could be treated to be composite service in complete disregard to the contract(s) and the process of billing?

(b) Whether in the facts and circumstances of the case, on a true and proper construction of the contract(s), the taxable services, which are severable and divisible, could be treated as individuals?

(c) Whether in the facts and circumstances of the case, the Adjudicating Authority could invoke the extended period of limitation under Section 73 of Chapter V of the Finance Act, 1994?

(d) Whether in the facts and circumstances of the case, penalty could be imposed under Section 78 of Chapter V of the Finance Act, 1994?

(e) Whether the impugned order dated January 15, 2020, passed by the Learned Tribunal is arbitrary and perverse?"

We have heard Mr. Abhratosh Majumdar, learned senior advocate appearing for the appellant and Mr. Vipul Kundalia, learned senior advocate assisted by Mr. Tapan Bhanja, learned counsel appearing for the respondent/department.

A preliminary objection has been raised by the learned senior advocate appearing for the department stating that this appeal is not maintainable before this Court in the light of the statutory bar under Section 35L of the Act. This objection is sought to be controverted by the learned senior advocate appearing for the appellant/assessee by contending that the Court has to look into the correctness of the order passed by the learned Tribunal in this appeal and if done so, it would be a case as to whether the essence of the contract entered into by the appellant would be the sole consideration apart from the fact that whether the department was justified in invoking the extended period of limitation while issuing the show cause notice. In order to satisfy ourselves we have carefully perused the materials on record. On going through the show cause notice dated 19.10.2010 it is evidently clear that the issue which is to be decided with regard to, under which head the service is rendered by the assessee has to be classified. The assessee while submitting the reply has also sought to address this issue and the show cause notice was adjudicated and the adjudication authority has dealt with classification issue and thereafter the confirmed the demands. This order was decided before the appellate authority and the Tribunal and, thus, essentially the matter relates to a classification dispute and if that be so,

there is a statutory bar for this Court to entertain this appeal under Section 35L(2) (b) of the Act.

For the above reasons, it is held that this appeal is not maintainable before this Court and, accordingly, the same stands disposed of and the connected application stands closed.

Needless to state that it is always open to the assessee to invoke the appellate remedy provided under the Act. Department is directed to return the original certified copy of the impugned order passed by the Tribunal after retaining the photostat copy.

(T.S. SIVAGNANAM)
(CHIEF JUSTICE)

(CHAITALI CHATTERJEE (DAS), J.)

