OD – 32

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Customs]

ORIGINAL SIDE

CUSTA/49/2026
IA NO: GA/1/2026
COMMISSIONER OF CUSTOMS (AIRPORT AND ADMIN), KOLKATA
VS
SHRI MANORANJAN MONDAL, DIRECTOR OF M/S LUCKY GOLDSTAR CO. LTD.

BEFORE :
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
And
THE HON'BLE JUSTICE PARTHA SARATHI SEN
Date : 25th June, 2026

Appearance :
Mr.Vipul Kundalia, Adv.
Ms. Sretapa Sinha, Adv.
..for appellant.

Mr. Rishi Raju, Adv.
Ms. Shreya Mundhra, Adv.
…for respondent.

The Court : The Court : 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.

> "*i. Whether the Learned Tribunal erred in law in discarding the re-classification of the goods under CTH 5007 1000 despite two expert test reports from two notified Government laboratories-Central Silk Board, Kolkata and CSTRI, Bangalore-both indicating the presence of Noil Silk, merely on the ground that the percentage weights were not identical?*
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> *ii. Whether the Learned Tribunal acted contrary to law by rejecting expert test reports on the basis of alleged "contradictions" without seeking fresh testing,*

reference to a higher laboratory, or remand, when classification under the Customs Tariff depends strictly on the nature and composition of the fabric?

iii. Whether the Learned Tribunal misdirected itself in holding that classification cannot be shifted to CTH 5007 1000 unless the goods contain 100% Noil Silk, when the Tariff Entry 5007 1000 does not mandate only 100% Noil Silk and classification depends on predominant fibre by weight?

iv. Whether the Learned Tribunal erred in law in ignoring the binding principle that laboratory test reports, issued by Government recognised laboratories, have primacy in determining classification, and cannot be discarded without any cogent contrary evidence?

v. Whether the Learned Tribunal erred in holding that there was no mis-declaration of description or value once classification was rejected, without independently examining other substantive evidence of over-valuation, inflated drawback claim, and manipulation of SEZ supplies?

vi. Whether the Learned Tribunal failed to appreciate that mis-declaration of value under the Export Valuation Rules is a separate cause of action, not automatically dependent on classification alone, and therefore erred in deleting the finding of over-valuation and redetermined value?

vii. Whether the Learned Tribunal exceeded its jurisdiction by entering into factual re-appreciation contrary to settled principles that findings of technical fact (lab tests, forensic evidence) cannot be brushed aside without contradictory expert evidence?"

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.)

(PARTHA SARATHI SEN, J.)

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