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ORDER SHEET
CEXA/35/2026
IA NO: GA/1/2026, GA/2/2026
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

COMMISSIONER OF CGST AND CENTRAL EXCISE, KOLKATA
SOUTH COMMISSIONERATE
VS
M/S ULTRA TECH CEMENT LIMITED

BEFORE:
The Hon'ble JUSTICE RAJARSHI BHARADWAJ
AND
The Hon'ble JUSTICE SUDIP DEB
Date: 5th October, 2026.

*Appearance:*
*Mr. Viupul Kundalia, Sr. Adv.*
*Mr. Tapan Bhanja, Adv.*
*. . .for the appellant.*

*Mr. Rahul Tangri, Adv.*
*Ms. Payal Bharwani, Adv.*
*.. .for the respondent*

The Court: Affidavit-in-opposition filed by the learned counsel appearing for the respondent/assessee is kept with the records.

Heard learned counsel appearing for the parties.

There is a delay of 263 days in filing the appeal. We are satisfied with the explanation offered for not preferring the appeal within time. Therefore, the delay is condoned. The application being GA/1/2026 is allowed.

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 read with Section 83 of the Finance Act.

> "A. Whether the Learned Tribunal is justified in setting aside the demand of service tax on Goods Transport Agency Service as defined under Section 65(105)(zzq) of the Finance Act, 1994 payable under reverse charge mechanism?
>
> B. Whether the Learned Tribunal committed manifest effort of law in observing that the adjudicating authority without commenting upon the correctness of CA certificates completely brushed aside such certificates when the adjudicating authority has gone through every document submitted by the respondent and has examined the documents submitted with the CA certificates and discussed them in the order and thus found that on the basis of those documents the correctness of the certificates cannot be verified?
>
> C. Whether the decision of the Learned Tribunal is legal and proper in observing that the independent CA Certificates have been issued based on verification of books of accounts of the Appellant (respondent herein), when the Chartered Accountant certificates have not been supported by the documentary evidences from which the correctness of the details of the certificates can be verified?

D. Whether the learned Tribunal is correct and justified in setting aside the Order-in-Original passed by the Adjudicating Authority on the basis of CA Certificate without proper verification of the documents?

E. Whether the impugned order dated 20.03.2026 passed by the Learned Tribunal is perverse, bad in law and liable to be set aside?"

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.)

(SUDIP DEB, J.)

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