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

BEFORE:
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
AND
THE HON'BLE JUSTICE UDAY KUMAR

OCOT 6 OF 2025

COMMISSIONER OF SERVICE TAX, KOLKATA
VS.
M/S. MSTC LIMITED

For the Appellant : Mr. B.P. Banerjee, Ld. Adv.
Mr. K. K. Maiti, Ld. Adv.

For the Respondent : Mr. Vinay Shraff, Ld. Adv.
Mr. Dev Agarwal, Ld. Adv.

Hearing concluded on : 27.01.2026

Judgment on : 11.02.2026

Uday Kumar, J:-

1. This appeal, preferred by the Revenue under Section 35G of the Central Excise Act, 1944, is directed against the judgment and order dated August 6, 2024, passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Eastern Zonal Bench, Kolkata, in Final Order No. 76625/2024.

2. The procedural history of the present matter necessitates a brief clarification. Initially, acting upon a report from the Registry, a notice regarding an alleged delay in filing was served upon the Respondent on

February 19, 2025. However, subsequent verification revealed that the Registry had erroneously computed a delay of 57 days by applying a 120-day limitation period. Inasmuch as Section 35G explicitly mandates a 180-day window for filing such appeals, this Court, by an order dated March 19, 2025, rectified the said error. Consequently, the appeal was held to have been filed within the statutory period, and no application for condonation of delay remains pending.

3. In the interim, the Respondent sought leave to file a Memorandum of Cross-Objection, accompanied by an application for condonation of delay (GA 1 of 2025). Upon this Court condoning the delay of 124 days by an order dated October 28, 2025, the Cross-Objection was formally taken on record and numbered as OCOT 6 of 2025.

4. When the matter was taken up for the Hearing on Admission on January 27, 2026, the learned Counsel for the Respondent/Cross-Objector raised a preliminary submission, asserting that the Cross-Objection ought to be heard and decided in the first instance. The Respondent contended that by virtue of Order 41 Rule 22 of the Code of Civil Procedure—applicable to these proceedings via the statutory conduit of Section 35G(9) of the Act—they possessed an inherent right to challenge adverse findings on the merits of taxability, notwithstanding that the final decree of the Tribunal was in their favour.

5. The gravamen of the Respondent's argument was that they were aggrieved by the Tribunal's specific finding that the 1% mark-up on High Sea Sales constitutes a taxable service. It was submitted that such a finding, if allowed to attain finality, would entail grave fiscal

consequences for the Respondent in subsequent assessment years. In support of the prayer for immediate adjudication, the Respondent placed heavy reliance upon the ratios in *Hardevinder Singh v. Paramjit Singh (2013) 9 SCC 261*, *Mahant Dhangir v. Madan Mohan (1987) 1 SCC 5*, and *Venture Global Engineering v. Satyam Computer Services Ltd. (2008) 1 SCC 494*.

6. We have considered the rival submissions at length, yet we find ourselves unable to subscribe to the procedural course suggested by the Respondent. The architecture of a statutory appeal under Section 35G is uniquely structured and admits of no ambiguity. An appeal under this section is a restricted one; it's very maintainability is contingent upon the Court's satisfaction that a "substantial question of law" is involved. Until this Court applies its judicial mind and formally admits the appeal by framing such questions, the proceedings remain at an embryonic stage.

7. In any event, a Cross-Objection is, in pith and substance, a derivative right—an appendage to a validly admitted appeal. The stage for pressing such an objection matures only after the main appeal has crossed the hurdle of admission and the Court has directed notice to the Respondent for a hearing on the merits. To permit a hearing on a Cross-Objection before the main appeal is even admitted would be to adjudicate the merits of a dispute before the Court has determined whether it has the jurisdiction to entertain the challenge.

8. We must further emphasize that at the stage of Hearing on Admission, the Court's focus is singular: to ascertain whether the Appellant has made out a case involving a substantial question of law. The Respondent, at this pre-admission stage, lacks the *locus standi* to invite the Court into the "thicket of merits." To allow such a prayer would be to put the cart before the horse and subvert the statutory scheme.

9. In any event, a Cross-Objection is, in pith and substance, a derivative right—an appendage to a validly admitted appeal. The stage for pressing such an objection matures only after the main appeal has crossed the hurdle of admission and the Court has directed notice to the Respondent for a hearing on the merits. To permit a hearing on a Cross-Objection before the main appeal is even admitted would be to adjudicate the merits of a dispute before the Court has determined whether it has the jurisdiction to entertain the challenge.

10. Accordingly, as the main appeal has not yet reached the stage of admission, the Cross-Objection (OCOT 6 of 2025) is hereby dismissed as premature.

11. The Appellant is directed to be ready with the Proposed Substantial Questions of Law, specifically addressing the Tribunal's findings on the invocation of the extended period of limitation under Section 73(1) of the Finance Act, 1994.

12. Let the appeal be listed for Hearing on Admission on February 26, 2026.

I AGREE

(RAJARSHI BHARADWAJ, J.) **(UDAY KUMAR, J.)**