OD – 18

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [CENTRAL EXCISE]
ORIGINAL SIDE

CEXA/50/2026
IA NO: GA/1/2026, GA/2/2026
COMMISSIONER OF SERVICE TAX II PRESENTLY KNOWN
AS COMMISSIONER OF CGST AND CX KOLKATA SOUTH COMMISSIONERATE
VS
M/S PHAROS SHIPPING AND OVERSEAS SERVICES PVT LTD

BEFORE :
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
And
THE HON'BLE JUSTICE SUDIP DEB
Date: 5th October, 2026.

Appearance:
Mr. Bhaskar Prasad Banerjee, Adv.
Mr. Kaustav Kanti Maiti, Adv.
…for appellant.

Mr. Ankit Kanodia, Adv.
Ms. Megha Agarwal, Adv.
Ms. Swarnawarshi Poddar, Adv.
…for respondent.

The Court: Heard learned counsels appearing for the parties.

There is a delay of 56 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 IA No. 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.

> *"(i) Whether the order of the Learned Tribunal is perverse, not legal, in breach of natural justice, but only relying upon the Chartered Accountant's certificate and disbursement statements produced during the Learned Tribunal, thus the factual*

determination has not been undertaken by the Learned Tribunal rendering the conclusion of the Learned Tribunal to the extent that the respondent acted as a 'pure agent' and such expenses are not includible in the assessable value is erroneous and not sustainable?

(ii) Whether the order of the Learned Tribunal is perverse, not legal, in violation of natural justice, absence of proper reasoning by not examining the mandatory conditions under Rule 5(2) of the Valuation Rules nor addressed the adjudicating authority's finding regarding absence of agreements, invoices and reconciliation?

(iii) Whether the order of the Learned Tribunal is perverse, not legal, in violation of natural justice, absence of proper reasoning regarding having not dealt with regarding the factual findings of the adjudicating authority regarding refundable amount actually not refunded to the service tax recipients, but shown as earning (other income) thereby enjoying the profit from such income and further not providing documentary evidence in support of the claim of the Respondent that the amount of Rs.2,89,56,121/- has actually been refunded to their clients for which tax liability has been imposed on the Respondent?"

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 and the connected application preferred by the department are 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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