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ORDER SHEET
CEXA/40/2025
IA NO:GA/1/2025
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

COMMISSIONER OF CGST AND CX KOLKATA
SOUTH COMMISSIONERATE
VS
M/S. MINE LINE PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE RAJARSHI BHARADWAJ
AND
The Hon'ble JUSTICE UDAY KUMAR
Date: 16th February, 2026.

Appearance:
Mr. Kaushik Dey, Adv.
Mr. K.K. Maiti, Adv.
...for the appellant

Mr. Abhijit Biswas, Adv.
Mr. B. Sengupta, Adv.
...for the respondent

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 activities of the respondent is "deemed Manufacture" where Section 2(f)(iii) provides which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer and when any affixation of label which associates the product with the supplier affects marketability and where "Supplied by Mine Line" gives an impression of brand ownership and falls under re-labeling?

II. Whether the respondent has declared that the spare parts are sent in "as it is with the MRP sticker" appears to be superfluous, willful mis-statement leading to suppression of facts where the Managing Director has also confirmed in her statement dated 21-07-2015 that goods are being packed in crates before delivering the same to their clients.

III. Whether in case of duty paid items and non-availment of CENVAT Credit can covert the manufacturing activities in to trading activity ?

IV. Whether the respondent is "manufacturer" or "Trader" where the Learned Tribunal has held that the activity carried out by the respondent with regard to the bought-out items amounts to manufacture in terms of Section 2(f)(iii) of the Central Excise Act, 1944 on the contrary the respondent could not explain the same as per declaration in the NIT document as "Manufacturer".

V. Whether the Order passed by the Learned Tribunal is perverse, bad in law and liable to be set aside or not ?”

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.)

(UDAY KUMAR, J.)

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