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

CEXA/37/2024
IA NO: GA/1/2024
M/S CENTRAL ARYA ROAD TRANSPORT
VS
THE PRINCIPAL COMMISSIONER OF CGST AND CENTRAL EXCISE KOLKATA
SOUTH COMMISSIONERATE

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : September 20, 2024.

Appearance :
Mr. Ankit Kanodia, Adv.
Ms. Megha Agarwal, Adv.
...for appellant.
Mr. Kaushik Dey, Adv.
Mr. Tapan Bhanja, Adv.
...for respondent

The Court :- We have heard learned Counsel appearing for the parties.

This appeal is directed against the order passed by the learned Tribunal rejecting the appeal filed by the appellant on the ground that the pre deposit has not been paid by cash but has been paid through the GST DRC-03. This according to the learned Tribunal has not authorized by law and the pre deposit has to be made in accordance with the Finance Act, 1994, read with the Central Excise Act, 1944. The appellant assessee has raised the following substantial questions of law for consideration:

- i) Whether the Instruction No.CBIC-240137/14/2022-Service Tax Section-CBEC dated 28.10.2022 issued by Central Board of Indirect Taxes and Customs (hereinafter referred to as “CBIC”) with respect to pre-deposit payment method for cases pertaining to central excise and service tax wherein it was stated that form GST DRC-03 is not a valid mode of payment for making pre-deposits is infructuous as there has been no rationale provided by the CBIC for such decision?
- ii) Whether the Instruction No.CBIC-240137/14/2022-Service Tax Section-CBEC dated 28.10.2022 issued by Central Board of Indirect Taxes and Customs (hereinafter referred to as “CBIC”) with respect to pre-deposit payment method for cases pertaining to central excise and service tax wherein it was stated that form GST DRC-03 is not a valid mode of payment for making pre-deposits is contrary to the provisions of section 142(7) of the CGST Act, 2017?
- iii) Whether the pre-deposit made by your Petitioner through form GST DRC-03 for filing an appeal under Section 86 of the Finance Act, 1994 before the Hon’ble CESTAT is valid in the eyes of law for interest of justice ?
- iv) Whether the Learned Tribunal erred in not taking into consideration the judgement of the Hon’ble Bombay High Court in the case of Oasis Realty Vs. Union of India, (2023) 3 Centax 86 (Bom.) wherein it was held that pre-deposit of disputed tax can be

paid either using amount available in electronic credit ledger or electronic cash ledger?

- v) Whether the Ld. Tribunal erred in not taking into account that the payment of pre-deposit made by your Petitioner through Form GST DRC-03 has been deposited in the Government treasury, thus the said appeal before the Ld. Tribunal ought to have been allowed?
- vi) Whether the Ld. Tribunal ought to have taken a liberal approach against your Petitioner with respect to the payment of pre-deposit through form GST DRC-03 on the ground of equity as your Petitioner had faced hardships for making pre-deposit for the said appeal with respect to a legacy dispute?

The first substantial question of law challenges the instruction issued by the CBIC dated 28.10.2022 which appears to be pursuant to said observations/directions issued by the High Court of judicature at Bombay in the case of SODEXO INDIA SERVICES PVT. LTD. Versus UNION OF INDIA, 2022(66) G.S.T.L. 257 (Bom.) to decide this substantial question of law the Court will have to go into the aspect as to whether the circular issued by the CBIC is sustainable. This decision can be taken only after an affidavit in opposition is filed by the appropriate authority. Therefore, we direct the respondent or any other appropriate authority having jurisdiction to file affidavit in opposition in which the aspect regarding validity of the instruction by the CBIC dated 28.10.2022 should be dealt with. Since the appellant has already deposited the amount required therefore, the form GST DRC-03 and

the said amount has not been reversed by the department till date, the same shall be retained as deposit in lieu of payment of cash as towards the pre deposit and the Court will take a decision on the substantial questions of law which have been raised.

List the matter on 22.11.2024 under the same heading.

In the meantime, the respondents are directed not to take any coercive action against the appellant.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH