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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 13.02.2024

+ CEAC 9/2023 & CM APPL. 35686/2023

COMMISSIONER CGST DELHI SOUTH Petitioner

versus

M/S NITIN INDUSTRIES (TRADE NAME) Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Akshay Amritanshu, Sr. Standing Counsel, Ms. Anjali Kumari, Mr. Samyak Jain, Mr. Ayush Raj, Advocates.

For the Respondent: Mr. N.K. Sharma, Mr. Kapil Gautam, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 24.11.2022 whereby the Custom Excise and Central Tax Tribunal has allowed the appeal filed by the respondent and permitted refund in terms of Section 142(3) read with Section 54 and Section 49(6) of the Central Goods and Service Tax Act, 2017.



2. An objection has been raised by the respondent with regard to low tax effect of the subject appeal and contends that a refund of Rs.30,48,272.47 has been allowed which is way below the permissible limit of Rs.1,00,00,000/- for filing an appeal.

3. Reference is drawn to instructions dated 22.08.2019 read with instruction dated 17.08.2011 whereby directions have been issued by the Central Board of Indirect Taxes & Customs to all Principal Chief Commissioners of GST and CGST for withdrawal of appeals which have tax effect below the limit of Rs.1,00,00,000/-. Instruction dated 17.08.2011 had fixed the limit of Rs.10,00,000/- for the High Courts which has now raised to Rs.1,00,00,000/- by the 2019 notification.

4. Learned counsel for the appellant contends that the impugned order erred in not applying the second proviso to Section 142(3) of the said Act and as such an appeal would still be maintainable.

5. Reference may be had to Para 1.3 of instruction dated 17.08.2011 which reads as under:

(Adverse judgments relating to the following should be contested irrespective of the amount involved:

a.) Where the constitutional validity of the provisions of an Act or Rule is under challenge.

b.) Where the notification/instruction/order or circular has been held illegal or ultra vires.)

6. Para 1.3 stipulates that irrespective of the amount involved



where constitutional validity of the provisions of an Act or Rule is under challenge or where a notification/instruction/order or circular has been held to be illegal or ultra vires, it is permissible for the Department to pursue the appeal irrespective of low tax effect.

7. In the instant case we notice that neither the constitutional validity of any provision of an Act or rule is under challenge nor any notification/instruction/order or circular has been held to be illegal or ultra vires. The Tribunal has noticed the peculiar facts of the present case and specifically held “in the facts of the present case”, the appellant is entitled to refund in terms of Section 142(3) read with Section 54 and 49(6) of the Act. Accordingly, we are of the view that the appeal would be barred in view of the low tax effect in term of instruction dated 22.08.2019. The question of law proposed by the appellant is left open.

8. The appeal is dismissed having low tax effect.

SANJEEV SACHDEVA, J

FEBRUARY 13, 2024
‘k’

RAVINDER DUDEJA, J