

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CEXA 31 OF 2009
IA No: GA/1/2009 (Old No:GA/1122/2009)
COMMISSIONER OF CENTRAL EXCISE, KOLKATA-II COMMISSIONERATE
VS.
M/S. BERGER PAINTS INDIA LTD.

BEFORE :

THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 3rd May, 2023

Appearance :
Mr. Vipul Kundalia, Adv.
Ms. Ekta Sinha, Adv.
... for appellant

Mr. Abhratosh Mazumder, Sr. Adv.
Ms. Neelanjana Pal Banerjee, Adv.
... for respondent

The Court : We have heard Mr. Vipul Kundalia, learned standing Counsel appearing for the appellant and Mr. Abhratosh Mazumder, learned senior Counsel for the respondent/assessee.

It is submitted by the learned senior Counsel for the respondent/assessee that the Tribunal disposed of by a common order six appeals and the lead case was M/s. Kothari Products Ltd. Against the impugned order passed by the Tribunal, the revenue preferred appeal before the High Court of Gauhati and the appeal was dismissed by the Division Bench as reported in 2012(278) E.L.T 43 (Gau.) (Union of India vs. Kothari Products Ltd.) .

Learned senior standing counsel for the appellant is directed to verify whether any appeal has been preferred against the decision of the High Court of Gauhati. Furthermore, we find that the respondent/assessee has succeeded before the Tribunal on a technical issue that the notification notifying the Principal Commissioner was not published in the official Gazette as required under Rule 3, read with Rule 2(f) of the Central Excise Rules. Assuming the department has accepted the decision in Kothari Products Ltd., it has to be seen whether subsequently this alleged defect was cured and notification was published in the official Gazette. If that exercise was done and the Committee of Commissioners as constituted and notified had exercised their powers under Section 65E, then there must be a need to decide the questions of law framed in this appeal.

Learned standing counsel for the appellant is directed to get necessary instructions from the department in this regard.

The application being IA No: GA/1/2009 (Old No:GA/1122/2009) is disposed of.

List the matter on 5th June, 2023.

(T.S. SIVAGNANAM, J.)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)