CEXA 31 of 2009
IN THE HIGH COURT AT CALCUTTA
In appeal from its
SPECIAL JURISDICTION (CENTRAL EXCISE)
CIVIL APPELLATE JURISDICTION

Commissioner of Central Excise, Kolkata – II
Versus
M/s. Berger Paints India Ltd.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 19th June 2023

Appearance:
Mr. Vipul Kundalia, Advocate
Ms. Manasi Mukherjee, Advocate
for the appellant

Mr. Abhrotosh Majumder, Advocate
Ms. Nilanjana Banerjee Pal, Advocate
for the respondent

The Court: The principal issue before the tribunal was whether the reviewing authority under section 35E of the Central Excuse Act, 1944 which is paramateria with section 129D of the Customs Act, 1962 had the competence to review the adjudication made by the adjudicating authority?

The tribunal in the impugned judgment and order has held that the said authority had no such power.

When this appeal came up for hearing on 3rd May 2023 the division bench of this Court presided over by the Hon'ble the Acting Chief Justice took note of a division bench judgment of the Gauhati High Court in *Union of India vs. Kothari Products Ltd. & Ors.* reported in 2012 (278) ELT 43. In that case the High Court had dismissed the appeal of the revenue against the order of the tribunal ruling that the reviewing authority had no competence to review the adjudicating authority's order.

The division bench by its order dated 3rd May 2023 directed the revenue to ascertain whether any challenge from the said order of the Gauhati High Court was pending before the Supreme Court.

We are informed today by both learned counsel that way back in 2011 a special leave petition was preferred before the Supreme Court of India from the said judgment and order. The said Court granted leave to appeal but also observed that there would be no stay of the impugned order and the appeal would be heard out "on the SLP paper books. Additional documents, if any, may be filed by the parties". The appeal is still pending.

Mr. Kundalia, learned advocate for the revenue submits that on 27th July 2012 a division bench of the Jharkhand High Court had pronounced a judgment and order in *Commissioner of Central Excise, Jamshedpur vs. TRF Ltd.* reported in 2013 (32) STR 266 which was more or less on an identical issue and favourable to the revenue.

We are of the view that since considerable time has elapsed after filing of this appeal, we should finally dispose of it as early as possible following whatever judgments there are in the field which are binding on us and take a decision as we think is just and proper.

Leave is granted to the revenue to file a compilation of notifications, circulars and a readable copy of the impugned judgment and order to be filed by 14th July 2023.

List the appal for hearing on 3rd August 2023.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

R. Bose