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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [CENTRAL EXCISE]
ORIGINAL SIDE

CEXA/26/2025
IA NO: GA/1/2025
COMMISSIONER OF CGST AND CX KOLKATA SOUTH COMMISSIONERATE
VS
M/S ELECTROSTEEL CASTINGS LIMITED

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 29th August, 2025.

Appearance :
Mr. Vipul Kundulia, Sr. Adv.
Mr. Tapan Bhanja, Adv. …for appellant.
Mr. Rahul Dhanuka, Adv.
Mr. Niraj Baheti, Adv. …for respondent.

The Court :- It appears that there are some inadvertent mistakes occurred in the grounds raised by the appellant/revenue.

Leave is granted to the learned advocate appearing for the appellant/revenue to correct those defects both in the memorandum of appeal and the stay application.

We have heard Mr. Vipul Kundulia, learned senior counsel assisted by Mr. Tapan Bhanja, learned advocate for the appellant/revenue and Mr. Rahul Dhanuka, learned advocate for the respondent/assessee.

This appeal has been filed by the revenue under section 35G of the Central Excise Act, 1944. Certain substantial questions of law have been suggested by the revenue.

The learned advocate appearing for the respondent/assessee raises a preliminary objection as regards the maintainability of the appeal by contending that the order impugned in this appeal has been passed by the learned Tribunal in terms of Rule 41 of the CESTAT [Procedure] Rules, 1982 and as against such order an appeal is not maintainable under section 35G of the Act. In support of his contention reliance has been placed on the decision of the High Court of Karnataka in the case of

Commissioner of Customs, Bangalore vs. Toyota Kirloskar Auto Parts Pvt.Ltd., 2013 [295] ELT 680 [Karnataka]. It is submitted that in the said decision it was held on identical fact situation that an appeal under section 35G was not maintainable. The appeal filed by the revenue before the Hon'ble Supreme Court has been dismissed as reported in *2013 [297] ELT A 149 [SC].* Therefore, at the outset, the preliminary objection raised by the learned advocate appearing for the respondent/assessee has to be considered and in this case if the objection is sustained then the appeal has to be held not maintainable. On the other hand, if the preliminary objection is decided against the respondent/assessee, this Court has to consider the substantial questions of law raised in this appeal by the revenue. Therefore, the appeal has to be heard on merits and decided. It appears that since no order of stay has been granted by this Court, the learned Tribunal has passed a direction on 4th July, 2025 adjourning the matter to 7th August, 2025 with a direction to the revenue to either obtain a stay order from this Court or comply with the order dated 4th July, 2025.

In the light of what has been noted in the preceding paragraph, the appeal requires to be heard and it is not feasible to do so today. Therefore, let the appeal be listed on 9th September, 2025.

In the meantime, if the revenue is required to comply with the direction issued by the learned Tribunal in its order dated 4th July, 2025, the appeal filed by the revenue itself will become infructuous. Therefore, the order and direction issued by the learned Tribunal in its order dated 4th July, 2025 shall remain stayed. List the appeal on 9th September, 2025 for hearing the preliminary objection.

(T.S. SIVAGNANAM, CJ)

(CHAITALI CHATTERJEE (DAS), J.)

SM/pkd