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ORDER SHEET
CEXA/48/2026
IA NO: GA/1/2026
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

COMMISSIONER OF SERVICE TAX-II PRESENTLY
KNOWN AS COMMISSIONER OF CGST AND CX
KOLKATA SOUTH
VS
M/S ALFA ALUMINIUM PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE RAJARSHI BHARADWAJ
AND
The Hon'ble JUSTICE SUDIP DEB
Date: 12th October, 2026.

Appearance:
Mr. Kaushik Dey, Adv.
Mr. Kaustuv Kanti Maiti, Adv.
. . .for the appellant.

Mr. Tarun Chatterjee, Adv.
Mr. Soumya Sankar Chini, Adv.
Mr. Raju Mondal, Adv.
. . .for the respondent.

The Court: Learned counsel appearing for the Service Tax Department suggests the following substantial questions of law by filing the appeal under Section 35G of the Central Excise Act, 1944 read with Section 83 of the Finance Act.

"a) Whether the Learned Tribunal has made gross mistake by not considering that the requirement of exercising option prior to payment of service tax under the composition scheme is mandatory or merely

procedural as well as benefit of a concessional taxation scheme may be granted in the face of violation of essential eligibility conditions?

b) Whether the Hon'ble Tribunal can simultaneously allow composition scheme benefit and direct valuation under Rule 2A, despite both being mutually exclusive mechanisms?

c) Whether in the instant case the suppression of material facts is established and the extended period of limitation as envisaged under proviso to Section 73(1) of the Finance Act, 1994 is rightly invokable despite admitted violations of statutory provisions and non-disclosure of material facts and for the same the respondent is liable for penalty under Section 78 of the said Act and the respondent is also liable to pay appropriate interest under Section 75 of the said Act as well as liable for penalty under Section 77 of the said Act for contravention of the provisions of Sections 67, 68 and 70 of the said Act for their willful suppression of facts and contravention of the provisions of the said Act with intent to evade payment of Service Tax?

d) Whether the Learned Tribunal is justified and erred in law by remanded the matter back to the adjudicating authority on relying upon the Hon'ble Supreme Court in the case of Commissioner of Cus. & C. Ex. & S.T., Noida Versus Interarch Building Products Pvt. Ltd., reported in 2023 (73) G.S.T.L. 433 (S.C.)/(2023) 6 Centax 40 (S.C.) where the Hon'ble Supreme Court held that the value of service needs to be determined in terms of Rule 2A(i) of the Service Tax (Determination of Value) Rules 2006

by excluding the value of the goods and VAT/WCT from the gross amount charged?

e) Whether the Order passed by the Learned Tribunal is perverse, bad in law and liable to be set aside or not and the decision relied upon by the Learned Tribunal is applicable to the present facts of the case?

f) Whether the decision relied upon by the Learned Tribunal is applicable to the present facts of the case?"

Section 35G of the Central Excise Act, 1944 speaks of appeal to High Court which is quoted below:-

> "35G. Appeal to High Court. – (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.
>
> (2) The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be –
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> (a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;
>
> (b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

[(2A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.]"

The Central Excise Act, 1944 also speaks of appeal to Supreme Court which is quoted below:-

"35L. Appeal to Supreme Court. – [(1)] An appeal shall lie to the Supreme Court from –

[(a) any judgment of the High Court delivered –

(i) in an appeal made under section 35G; or

(ii) on a reference made under section 35G by the Appellate Tribunal before the 1st day of July, 2003;

(iii) on a reference made under section 35H,

in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or]

(b) any order passed [before the establishment of the National Tax Tribunal] by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

[(2) For the purposes of this Chapter, the determination of any question having a relation to the rate of duty shall include the determination of taxability or excisability of goods for the purpose of assessment.]"

On perusal of Sections 35G and 35L of the Central Excise Act, 1944, in our opinion, this appeal should be preferred before the Hon'ble Supreme Court under Section 35L Sub-section (2) of the Act.

The appeal preferred by the department is dismissed.

Leave is granted to the learned advocate-on-record of the appellant to receive certified copy of the tribunal from the department and replace it with a photocopy of the same.

(RAJARSHI BHARADWAJ, J.)

(SUDIP DEB, J.)

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