(2011) 03 KAR CK 0080

In the Karnataka High Court

Case No : C.E.A. No. 134 of 2007

Commissioner of C. Ex. — APPELLANT

Vs

Abinandan Petro Pack Pvt. Ltd. — RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Citation : (2011) 267 ELT 579

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : N.R. Bhaskar, for the Appellant; T. Rajeshwara Shastry, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is by the revenue challenging the order passed by the Tribunal, which has held that there is no corroborative evidence to sustain the charges of clandestine removal and therefore, the demand cannot be sustained.

2. Therefore, the substantial question of law if at all it arises for consideration in this appeal is whether the revenue was justified in demanding the duty on the ground of clandestine removal of goods. The said determination to be done by this Court falls squarely within the phrase "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". The said question is outside the purview of an appeal or a reference to this Court u/s 35H of the Act earlier. It falls squarely within 35L of the Act to be determined by the Apex Court. In that view of the matter, the appeal is rejected reserving liberty to the revenue to prefer a statutory appeal u/s 35L of the Act.

