

(2011) 04 KAR CK 0059
In the Karnataka High Court
Case No : C.E.A. No. 128 of 2009

Commissioner of C. Ex., Bangalore-II

APPELLANT

Vs

Madras Cements Ltd.

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Citation : (2012) 278 ELT 194

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

Bench : Division Bench

Advocate : Jeevan J. Neeralgi, for the Appellant;

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is by the Revenue challenging the order passed by the Tribunal [2010 (249) E.L.T. 268 (Tri.-Bang.)] holding that the assessee is entitled to the benefit of exemption Notification Nos. 6/02 and 4/06 dated 1-3-2002 as amended, they were affixing the words "RAMCO PRODUCT" in the local language and they were also selling the cement under their own trade mark "KARTHIC". The Revenue proceeded against the assessee on the ground that the use of the words "RAMCO PRODUCT" would not entitle them to the benefit of the notification in view of the express stipulation in the notification, denying the said benefit to persons who are selling their product on the basis of others brands name or trade name. After hearing the assessee, overruling the same, the Commissioner confirmed the demand and imposed penalty and interest. Aggrieved by the said order, the assessee preferred an appeal to the Tribunal. The Tribunal held that the assessee had used their trade name "KARTHIC" on HDPE bags containing cement. The words "RAMCO PRODUCT" were also written. It is the case of the Department that "RAMCO" is the brand name of other person. In the show cause notice issued. It is not mentioned who is the owner of the brand name "RAMCO PRODUCT". The assessee contends that "RAMCO" is their own brand name. They submit that approval for the brand name "RAMCO" was given in the year 1987. They have submitted a copy of registration

certificate. In those circumstances, the Tribunal held that the assessee did not violate the condition of notification and accordingly is entitled to exemption under the notification. Aggrieved by the said order, the Revenue is in appeal. The appeal was admitted to consider the following substantial questions of law :

(1) Whether the clearance of the Cement on payment of duty at the concessional rate of duty with the brand name of other person under Notification No. 6/2002, dated 1-3-2003-C.E. as amended and No. 4/2006, dated 1-3-2006 as amended in the light of the judgment of the Hon"ble Apex Court reported in 2005 (183) E.L.T. 123 (S.C.) is correct.

(2) Whether the impugned order of the Tribunal in allowing the appeal of the respondent thereby permitting to avail the benefit of the Notification No. 4/2006-C.E. and thereby extending the scope and object of the Notification though the respondent is using the brand name of another son is in accordance with law?

(3) Whether the impugned order of the CESTAT is correct and legal in extending the benefit of Notification No. 4/2006-C.E. in favour of the respondent when there is no ambiguity in the notification?

(4) Whether the order of the CESTAT in holding that the brand name "RAMCO" belongs to the respondent and not any one is correct in law?

2. The said question squarely falls within the exception carved out in Section 35G, "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 purposes of assessment", and the High Court has no jurisdiction to adjudicate the said issue as held by this Court in the case of The Commissioner of Central Excise Vs. Mangalore Refineries and Petrochemicals Ltd., The same is to be adjudicated by the Apex Court u/s 35L of the Act.

3. In that view of the matter, without deciding the substantial question of law which is framed in this appeal, we reject this appeal as not maintainable. However liberty is reserved to the Revenue to approach the Apex Court for adjudication of the substantial question of law raised in this appeal. The High Court Registry is directed to return the certified copies of the orders impugned herein to enable the Revenue to prefer the appeal to the Apex Court.