(2011) 03 KAR CK 0273

In the Karnataka High Court

Case No : C.E.A. No. 7 of 2011

Commissioner of Central Excise, Bangalore-III — APPELLANT

Vs

Personality Ltd. — RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:
Central Excise Act, 1944 — Section 35 L

Citation : (2012) 276 ELT 297

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

Bench : Division Bench

Advocate : C. Shashikantha, for the Appellant;

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is by the revenue challenging the order passed by the Tribunal 2011 (183) ECR 93 which has set aside the demand on the ground that it is barred by the law of limitation.

2. The assessee is a manufacturer of readymade garments made of knitted and crocheted fabrics. During the period from 26-9-2002 to 5-1-2003 the assessee had cleared its finished goods availing the benefit of Notification No. 15/2002-CE., dated 1-3-2002. The authorities realised that the assessee was not entitled to the benefit of the notification and it had wrongly claimed the benefit and therefore, they issued a demand demanding a sum of Rs. 12,10,224/- as the duty payable with interest and an equal amount of penalty. The said demand was challenged by the assessee before the original authority who sustained the demand, against which an appeal came to be filed before the Commissioner of Central Excise (Appeals II), Bangalore which was dismissed. Against the said order, the assessee preferred an appeal before the Tribunal. The Tribunal set aside the aforesaid demand on the ground that it is barred by limitation as the demand was made after the expiry of one year. Aggrieved by the same, the revenue is before this Court.

3. Learned counsel appearing for the revenue contended that, as a case of suppression of true facts while filing the returns and claiming exemption is made out, the period applicable is five years and not one year as wrongly held by the Tribunal.

4. From the aforesaid facts, it is clear that the assessee claimed exemption from payment of excise duty in pursuance to the Notification No. 15/2002-C.E., dated 1-3-2002. The demand is issued on the ground that the said exemption is wrongly claimed. The assessee contends that exemption is applicable to the transaction in question. Unless the question whether the exemption is applicable or not is decided, the question of going into limitation does not arise. However, whether the assessee was entitled to exemption under the notification is a matter which falls within the phrase ''determination of rate of duty payable'', which, only the Apex Court is competent to decide in an appeal filed u/s 35L of the Central Excise Act, 1944 and the jurisdiction of the High Court is excluded.

5. In that view of the matter, appeal is rejected reserving liberty to the revenue to approach the Apex Court u/s 35L of the Central Excise Act.

6. Ordered accordingly.