(2014) 02 KAR CK 0390

In the Karnataka High Court

Case No : Central Excise Appeal No. 146 of 2007

Commissioner of Central Excise Service Tax Commissionerate — APPELLANT

Vs

Navakaranataka Steels Ltd. — RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G, 35L

Citation : (2014) 80 KarLJ 9 : (2014) 73 VST 483

Hon'ble Judges : Ravi V. Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : Rosa Paramel, Advocate for the Appellant; A.S. Monappa, Advocate for the Respondent

Judgement

Ravi V. Malimath, J.—This appeal is filed by the Revenue u/s 35G of the Central Excise Act, 1944 questioning the order of the Tribunal upholding an order-in-appeal by which service tax by the assessee was set-aside on the ground that a clearing and forwarding agent who procures orders and gets commission cannot be treated to come within the category of "clearing and forwarding service". The question is with regard to the leviability of the service tax which falls within the phrase determination of tax. The said question squarely falls within the Explanation carved out u/s 35G of the Act and therefore, the High Court would not have any jurisdiction to adjudicate the said issue as held by the judgment dated September 1, 2010 passed by the honourable Division Bench of this court in CEA No. 6 of 2007, in the case of The Commissioner of Central Excise Vs. Mangalore Refineries and Petrochemicals Ltd., . In terms of the said judgment, the appeal lies to the apex court u/s 35L, which court alone would have jurisdiction to decide the said question.

2. Consequently, the appeal is dismissed by reserving liberty to the Revenue to prefer an appeal before the apex court.