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(2011) 04 KAR CK 0193

In the Karnataka High Court

Case No : C.E.A. No. 158 of 2007

Commissioner of Service Tax, Bangalore APPELLANT

Vs

Shah Polymers RESPONDENT

Date of Decision : 13-04-2011

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

Citation : (2012) 26 STR 513

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

Bench : Division Bench

Advocate : N.R. Bhaskar, for the Appellant;

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is by the Revenue challenging the order passed by the Tribunal [2007 (7) S.T.R. 646 (Tri. - Bang.)], which has held that the assessee, a Del Credere Agent its activity do not fall under the category of Clearing and Forwarding Agent and therefore, the assessee is not liable to pay service tax. The assessee-M/s. Shah Polymers is engaged in the business of clearing and forwarding agents and registered with the Department as ''Business Auxiliary Service''. During the investigation, it was revealed that the assessee are engaged in the business of rendering taxable services falling under the category of Clearing and Forwarding Agents and were evading payment of service tax on the amounts received by them towards the said services from RIL and IPCL. Therefore, a show cause notice came to be issued on 19-4-2005 calling upon them to show cause as to why the service tax should not be levied with interest and penalty. They gave a reply contending that in view of the judgment of the CESTAT, South Zonal, Bangalore in the case of M/s. Raja Rajeshwari Polymer (P) Ltd. v. CCE, Bangalore, the activities carried on by them do not come under the purview of Clearing and Forwarding Agent and therefore, they are not liable to pay service tax. Overruling the said objection, the Joint Commissioner of the Service Tax, Bangalore confirmed the service tax and also levied interest and penalty. Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of Central Excise who allowed the appeal and set aside the order passed by the Joint Commissioner. Aggrieved by the same, the revenue preferred an appeal to the Tribunal. The Tribunal dismissed the appeal following the judgment in M/s. Raja Rajeshwari International Polymer (P) Ltd. v. CCE, Bangalore''s case. Being aggrieved by the same, the Revenue is in appeal.

2. From the aforesaid facts it is clear, the question that arise for our consideration in this appeal is:

Whether the activities carried on by the assessee as Del Credere agents falls within the category of clearing and forwarding agent?

3. The said question falls squarely within the exception carved out in Section 35G, ''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 appeal lies to the Apex Court u/s 35L, which alone has exclusive jurisdiction to decide the said question.

4. In that view of the matter, the appeal is rejected as not maintainable, reserving liberty to the Revenue to approach the Apex Court. The High Court registry is directed to return the certified copies of the orders produced, to the Department, to prefer the appeal.

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