(2011) 04 KAR CK 0159

In the Karnataka High Court

Case No : CEA No. 7 of 2008 with CEA No''s. 8 and 9 of 2008

Commissioner of Service Tax, Bangalore — APPELLANT

Vs

Siddarth Polymers — RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:
Finance Act, 1994 — Section 35 G, 35 L, 65 (25)

Citation : (2011) 23 STR 209

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

Bench : Division Bench

Advocate : Latha Prasad, for the Appellant; K.S. Ravishankar, for the Respondent

Judgement

N. Kumar, J.—The revenue has preferred these three appeals against the common order passed by the Tribunal [2007 (7) S.T.R. 472 (Tribunal)] holding that the finding of the Commissioner of Appeals that the activities relied on by the assessees as consignment agents do not fall within the category of clearing and forwarding agent. In coming to the said conclusion the Tribunal has followed the judgment of the Larger Bench of the Tribunal in the case of Larsen and Toubro Limited v. CCE 2006 (3) S.T.R. 321 (Tri.-Bang.) where it has been held that the activity of procuring orders has been treated separately by Parliament under Business Auxiliary Services and they are independent of clearing and forwarding operations.

2. Therefore, the question that arise for our consideration in these appeals is, Whether the activities carried on by the assesses fall within the category of consignment agent or clearing and forwarding agent or Business Auxiliary Services? In fact, CEA 8/2008 came to be admitted to consider the following substantial questions of law :-

1. Whether the CESTAT is right in holding that the service provided by respondents is not covered under the category of "clearing and forwarding agent", as defined u/s 65(25) of the Finance Act, 1994?

2. When the facts of the case clearly establish that the activities of the respondent''s establishment fall under the taxable category of "clearing and forwarding agent", the impugned order passed by the CESTAT is legal and valid?

3. The said question falls squarely 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 Commissioner of Central Excise v. M/s. Mangalore Refineries and Petro Chemicals Limited, CEA No. 6/2007 D.D. 1-9-2010, 2011 (270) E.L.T. 49 (Kar.)]. 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 appeals are rejected as not maintainable, reserving liberty to the Revenue to approach the Apex Court.

5. The High Court registry is directed to return the certified copies of the orders produced, to the Department, to prefer the appeal.

