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(2011) 02 KAR CK 0200

In the Karnataka High Court

Case No : C.E.A. No. 46 of 2010

Commr. of C. Ex. and Service Tax, Mangalore — APPELLANT

Vs

S.S. Maritime — RESPONDENT

Date of Decision : 10-02-2011

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

Citation : (2011) 23 STR 114

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

Bench : Division Bench

Advocate : Jeevan J. Meeralgi, for the Appellant;

Judgement

1. This appeal is filed by the revenue challenging the order passed by the Appellate Tribunal (2009) 20 STJ 39 holding that no service tax is payable in respect of services rendered by the assessee as it does not fall within the category of ''port service''.

2. Therefore the question for consideration in this appeal is whether the impugned activities which were not required to be provided by the port under Major Port Trusts Act, 1963 falls under the definition of ''port service'' and consequently, the same is not liable to payment of service tax other. In words, the question pertains to classification of service rendered. The said question is excluded from the purview of this Court u/s 35G of the Central Excise Act and the same has to be decided by the Apex Court u/s 35L of the Act. In this view of the matter the appeal is not maintainable.

3. Accordingly, this appeal is rejected reserving liberty to the appellant to approach the Apex Court.

4. The Registry is directed to return the certified copies filed along with the appeal memo to enable the appellant to approach the Apex Court.

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