(2010) 02 KAR CK 0038

In the Karnataka High Court

Case No : C.E.A. No. 34 of 2005

Commr. of C. Ex. APPELLANT

Vs

Sri Anjaneya Cotton Mills Ltd. RESPONDENT

Date of Decision : 15-02-2010

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

Citation : (2010) 253 ELT 783

Hon'ble Judges : K.L. Manjunath, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Y. Hari Prasad and R. Yateesh Kumar, for the Appellant; J. Rajeswara Sastry and Assts., for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The revenue has come up in this appeal challenging the legality and correctness of the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore in Appeal No. E/864-866/04 dated 5-4-2005, wherein the Tribunal by allowing the appeal of the respondent has set aside the demand of duty as not sustainable and so also the penalty imposed on the respondent. Against which, the present appeal is filed u/s 35G of the Central Excise Act, 1944, raising the following substantial questions of law:

(a) Whether, relying upon, the statement of the concerned persons i.e. Managing Director and the Factory Manager of the unit is not legal and brushing aside as suspicion, though well founded cannot take place of solid evidences.

(b) Whether, mere retraction of their own earlier statements of the concerned M.D. and Factory Manager of the unit after the case was registered and the demand was confirmed, is legal enough and has evidentiary value so as to set aside the Original Order itself?

(c) When the private records and also the accepted statements of the M.D. and factory Manager and the dealer who accepted that the goods received were Cross Reel Hank only though in the invoices it was shown as Plain Reel Hank, which revealed the actual intention of the assessee to evade payment of duty, the CESTAT''s allegation and assumption that it is only assumption not real fact is correct as per law?

2. When the matter was taken up for final hearing, the Learned Counsel for the respondent has raised the question of maintainability of this appeal by the revenue. According to him, the subject matter of the appeal is relating to rate of duty and excise. Therefore, an appeal u/s 35G of the Central Excise Act, 1944 is not maintainable. According to him, if the appellant is aggrieved by the order of the Tribunal. The matter has to be taken up before the Hon''ble Supreme Court and that the appeal u/s 35G before this Court is not maintainable. To substantiate his arguments, he has taken us through the show cause notice issued by the revenue dated 25-2-2002 which is produced as Annexure-C to the appeal. On perusal of the show cause notice, the question is in regard to evading of duty of Central Excise and the question is whether at what rate the respondent Company has to pay the excise duty provided the same is liable to be paid by the respondent.

3. Since the dispute is in regard to duty payable by the respondent, we are of the view, that the appeal filed u/s 35G of the Central Excise Act, 1944, before this Court is not maintainable.

4. Accordingly, the appeal is dismissed as not maintainable. Liberty is granted to the appellant to pursue the remedy before the Hon''ble Apex Court, if so advised.