(2011) 03 KAR CK 0371

In the Karnataka High Court

Case No : C.E.A. No. 82 of 2010

Commr. of C. EX., Bangalore-II APPELLANT

Vs

Bremels Rubber Industries Pvt. Ltd. RESPONDENT

Date of Decision : 10-03-2011

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

Citation : (2011) 269 ELT 45

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

Bench : Division Bench

Advocate : Jeevan J. Neeralgi, for the Appellant; Chander Kumar and Associates, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is by the revenue challenging the order passed by the Tribunal Holding that the confirmation of demand on the clandestine removal of goods from the factory premises of the assessee does not hold any merit as there is no evidence to show that the goods which were alleged to have been clandestinely removed were in fact manufactured by the assessee in the absence of any flow of the raw materials from the so called units from whom the purchases were recorded by the assessee.

2. Therefore, the substantial question that arise for our consideration is, "Whether these goods were manufactured by the assessee and is excisable?" Even otherwise, the question would be, "Whether the raw materials for manufacture of these goods came from the so called units from whom purchase were recorded by the assessee?"

3. These questions would fall within the phrase, "among other grounds, determination of rate of duty for value of goods" which the Apex Court alone is exclusively entitled to decide u/s 35G and this Court has no jurisdiction to go into the question,

4. In that view of the matter, this appeal is rejected reserving liberty to the revenue to approach the Apex Court u/s 35L of the Central Excise Act, 1944. Office is directed to return all the papers filed along with the appeal memo to enable the revenue to prefer an appeal to the Apex Court.

