

(2011) 06 KAR CK 0123

In the Karnataka High Court

Case No : C.E.A. No. 214 of 2010 with C.E.A. No's. 215-218 of 2010

Commr. of C. EX., CUS. and S.T., Belgaum

APPELLANT

Vs

Jindal South West Steel Ltd.

RESPONDENT

Date of Decision : 09-06-2011

Acts Referred:

Central Excise Tariff Act, 1985 — Section 35 L

Citation : (2011) 273 ELT 165 : (2012) 27 STR 201 : (2013) 38 STT 92

Hon'ble Judges : N. Kumar, J;Aravind Kumar, J

Bench : Division Bench

Advocate : S.N. Rajendra, for the Appellant; K.S. Ravishankar, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—All these appeals are preferred by the Revenue which are admitted by this Court to consider the following substantial questions of law.

(i) Whether under the facts and circumstance of the case the Tribunal is right in modifying the demand though respondent have wrongly classified under Chapter Heading 2705 instead of 2811.90 of 1st Schedule to 1985 Tariff?

(ii) Whether under the facts and circumstances of the case the Tribunal is right in setting aside the penalty which is mandatory under Rule 25 of Rules?

2. The preliminary question which arise for determination is, whether the "Corex Gas" which emerges in the course of manufacturing final products namely HR coils, and is it a final product or a by-product.

3. The revenue contends, it is a final product and according to them it falls under the classification of Carbon Monoxide under Central Excise Tariff Act. On that basis they have raised a demand duty for different periods.

4. The assessee contended that in the first place the said by-product is not excisable under Central Excise Act and at any rate as Carbon Monoxide and no

duty is payable. The authorities have disallowed the claim of the Revenue regarding levy of penalty on the ground that it is barred by law of limitation and confirmed the levy.

5. To the extent confirming the demand the assessee has already approached the Apex Court u/s 35-L of the Central Excise Act and they are numbered as Civil Appeal Nos. 3393-3396/2010. In fact the authorities also held, in the facts of the case the imposition of penalty is bad and they have set aside that portion of the demand. The Revenue has preferred the Appeal No. 214/2010 challenging that portion of the order which disallowed on the ground of limitation. In the other four connected cases the Revenue has challenged the setting aside the penalty.

6. The question of bar of limitation as well as setting aside the penalty is dependant on the leviability of excise duty on the impugned product. That is an issue which is to be decided by the Apex Court and the Apex Court is already seized of the matter. As the findings on that issue would have direct bearing in deciding the issues arisen in these appeals and all these issues arise out of the very same order, it is settled law that these issues cannot be bifurcated and decided by this court. It is a composite order, this issue also has to be decided by Apex Court and Revenue has to file appeal u/s 35-L of the Central Excise Act before the Apex Court. This Court has no jurisdiction to entertain these appeals.

7. Therefore, these appeals are rejected as not maintainable, reserving liberty to the Revenue to approach the Apex Court u/s 35-L of the Act.

8. Ordered accordingly.