(2016) 03 KAR CK 0302

In the Karnataka High Court

Case No : C.E.A. No. 35 of 2015

Principal Commr. of C.E., Bangalore-I APPELLANT

Vs

Wipro GE Medical Systems P. Ltd. RESPONDENT

Date of Decision : 22-03-2016

Acts Referred:

Citation : (2016) 337 ELT 51

Hon'ble Judges : Jayant Patel and B.V. Nagarathna, JJ.

Bench : Division Bench

Advocate : Shri Jeevan J. Neeralgi, Advocate, for the Appellant; Shri G. Shivadass, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—The present appeal is directed against order dated 14-11-2014, passed by the Tribunal in Final Order No. 22035/2014 rejecting the appeal.

2. We have heard Mr. Jeevan J. Neeralgi, learned counsel appearing for the appellant and Mr. G. Shivadass, learned counsel appearing for the respondent.

3. As such, in the order of the Tribunal at Paragraph No. 4, it had been observed as under :

"4. However, after decision of Larger Bench of the Tribunal in the case of Unison Metals Ltd. (supra), the Board has examined the circular and clarified that in the case of payment made under erstwhile Rule 57CC(1) corresponding to Rule 6(3) of Cenvat Credit Rules, 2004, Section 11D of the Act is not applicable since the amount of 8% or 10% has already been paid to the Revenue and no amount is retained by the assessee. It was also stated by the Board that this decision has been accepted. At this stage, learned AR submitted that the customers might have taken credit of duty paid. However, there is no evidence to show such is the case and this is not a ground also and this cannot be a ground even after the Board''s Circular. In view of above, appeal filed by the Revenue is devoid of merits and is rejected. Cross objection filed by the respondent-assessee also gets disposed of."

The aforesaid shows that as the contention was raised on fallacies and surmises, it has not been accepted by the Tribunal.

4. However, learned counsel appearing for the appellant reiterated the same contention, but he is unable to show any evidence that the customer of the respondent has claimed the benefit of input tax credit/Cenvat credit on the goods, which were purchased by him from the respondent herein after payment of 8% tax and therefore, the appellant should be in a position to recover tax collected by respondent. As such, in the absence of any evidence, we cannot find fault with the order of the Tribunal. However, in the event any legal evidence is available with the appellant, they may resort to take appropriate proceedings in accordance with law and at that stage, the rights and contentions of all the parties would remain open.

5. Subject to the aforesaid observations, appeal is dismissed.