

**Cc Ex. Vs. Electro Appliances**

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**SooperKanoon Citation :** [sooperkanoon.com/32816](http://sooperkanoon.com/32816)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Oct-28-2003

**Reported in :** (2004)(165)ELT233Tri(Mum.)bai

**Judge :** K Usha, N T C.N.B.

**Appellant :** Cc Ex.

**Respondent :** Electro Appliances

**Judgement :**

1. Challenge in this appeal at the instance of the Revenue is against the order passed by the Commissioner (Appeals) dated 7.4.98.
2. The issue raised is whether Commissioner (Appeals) is justified in holding that an application by the department under Section 35-E(2) of the Central Excise Act, 1944 against an order of approval of classification list passed by the Assistant Commissioner is not maintainable. Commissioner (Appeals) took the view that such an order passed by the Assistant Commissioner is not a quasi judicial order and therefore, not appealable. He accepted the contention raised by the respondent-assessee that the course available with the department was to direct the Assistant Commissioner to reassess the correct amount payable following the provisions of Section 11-A of the Act.
3. It is contended on behalf of the Revenue before us that the order passed by the Assistant Commissioner is one in the nature of quasi judicial order and therefore,

an appeal would lie under Section 35-E(2). On behalf of the respondent, it was contended that if assessee is aggrieved by an order approving the classification list, it is open to them to file an appeal under Section 35. But, as far as the Revenue is concerned, no such remedy is available. The learned DR brought to our notice a decision of the Tribunal in Collector of C.Ex. Raipur v. Venkateswar Ispat P. Ltd. 2002(147) ELT 1135 wherein it has been held that the approval of classification list is a quasi judicial action and appeal lies to the Commissioner (Appeals). We are not able to accept the contention raised by the respondent that an order passed by the Assistant Commissioner in the matter of approval of classification list will be a quasi judicial order as far as the assessee is concerned and is only an administrative order for the Revenue. According to us, it is a quasi judicial order and an application under Section 35-E will be maintainable at the instance of the Revenue. We, therefore, set aside the order impugned and remand the matter to the Commissioner (Appeals) for consideration of appeal on merits. The Commissioner (A) will pass final orders within three months from the date of receipt of copy of this order.

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