

**Commissioner of Central Excise Vs. Sona Casting Pvt. Ltd.**

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

**Decided On :** May-24-2005

**Reported in :** (2006)(193)ELT193TriDel

**Judge :** P Bajaj

**Appellant :** Commissioner of Central Excise

**Respondent :** Sona Casting Pvt. Ltd.

**Judgement :**

1. None has appeared on behalf of the respondents. They have requested to decide the case on merits.

2. In this appeal the Revenue has not contested the correctness of the impugned order-in-appeal, on merits vide which the Commissioner (Appeals) has allowed the credit and dropped the duty demand on imported melting scrap used by the respondents in the manufacture of final product, after receipt of the same from Punjab State Warehousing Corpn., the custodian of the imported goods, on the ground that the end-use certificate, had been submitted by the respondents and whatever quantity of goods they received from the above said Corpn., they utilised the same. The correctness of the order has been questioned only on the ground of jurisdiction by contending the jurisdiction of the Commissioner (Appeals) was taken away vide Notification No.78/2002-Cus., dated 5-12-2002. But this contention/ground of the Revenue cannot be accepted. The above said notification was issued only when the appeal was at the stage of hearing of the arguments by

the Commissioner (Appeals). Moreover after this notification, the appeal was never transferred by the Board or any competent authority, from the Commissioner (Appeals), to any other competent officer, for hearing the appeal. No objection in that regard was also taken by the Department before the Commissioner (Appeals) at the time of hearing of the appeal on merits. Therefore, no prejudice can be said to have been caused on that account to the Revenue especially when on merits the impugned order had not been challenged. Therefore, the impugned order is upheld. The appeal of the Revenue is dismissed.

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