Commissioner of Central Excise Vs. Sarla Polyester Ltd.

Commissioner of Central Excise Vs. Sarla Polyester Ltd.

SooperKanoon Citation : sooperkanoon.com/40292

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-19-2005

Reported in : (2006)(194)ELT416Tri(Mum.)bai

Judge : S T S.S.

Appellant : Commissioner of Central Excise

Respondent : Sarla Polyester Ltd.

Judgement :

2. The issue that the respondent had filed a refund claim of Rs. 2,86,400/- paid as supervising charges for the officers required at 100% EOU during the period July, 1998 to September, 2000. A Show Cause Notice was issued on 22.10.2001 as regards the refund claim on the ground that the charges were paid by the assessee on their own wishes and at the time of payment no protest was lodged at per Central Excise Act, 1944 and the Rules framed thereunder and there were no provisions under the said Act to refund such supervision charges. It was also alleged in the notice that the party had included the amount of supervision charges in the assessable value of the goods and whereby passed the incidence to their buyers.

3. The Commissioner of Central Excise (Appeals), relying upon the decision of the Rajasthan High Court in Shri Pipe Ltd. v. Union of India 1995 (79) ELT 05 (Raj), set aside the order of the lower authority.

4. The provisions of the Central Excise Act, 1944 especially Section 35B did not provide for entertaining an appeal against administrative expenses, supervision charges, mercantile overtime fees etc collected from as assessee by the department, to provide services of an officer.

The present appeal therefore, though an order passed by Commissioner of Central Excise (Appeals) under Section 35A, cannot be entertained by this Tribunal