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Commissioner of Cus. Vs. Laraon Engineers and Consultant

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-24-2005

Reported in : (2006)(193)ELT192TriDel

Judge : S Kang, Vice-

Appellant : Commissioner of Cus.

Respondent : Laraon Engineers and Consultant

Judgement :

1. The Revenue filed this application for stay of the operation of the impugned order on the ground that the refund claim filed by the respondent was allowed. In the impugned order, the applicant without challenging the assessment order filed the refund which is against the principles of law laid down by the Hon'ble Supreme Court in the case of CCE v. Flock India Pvt. Ltd. reported in 2000 (120) E.L.T. 285. The contention of the respondent is that the refund is of the amount, which was deposited in excess due to clerical error. The contention is that the packing charges were mentioned in the Bill of Entry as 5500 EURO instead of 55 EURO as mentioned in the invoice. I find that in this situation when the refund is due to clerical error, prima facie, I find no infirmity in the impugned order, the stay petition is dismissed.

2. Further, the Commissioner (Appeals) only remanded the matter to the adjudicating authority to decide the refund claim on merit. The appeal filed by the respondent was allowed in respect of refund. In these circumstances, I find no

merit in the appeal, the same is dismissed.

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