Commissioner of Central Excise Vs. Agarwal Metal and Rolling Mills

Commissioner of Central Excise Vs. Agarwal Metal and Rolling Mills

SooperKanoon Citation : sooperkanoon.com/41410

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-05-2006

Judge : S Kang, Vice-, N T C.N.B.

Appellant : Commissioner of Central Excise

Respondent : Agarwal Metal and Rolling Mills

Judgement :

2. The Revenue filed this appeal against the order-in-appeal passed by the Commissioner (Appeals) whereby the refund claim of the respondent was allowed.

3. The contention of the Revenue is that in the impugned order Commissioner (Appeals) allowed the benefit of Notification No.6/2002-CE., dated 1.3.2002 which was claimed first time in the refund application on the basis of order in appeal passed by the Commissioner (Appeals) in respect of some other manufacturer i.e. Mewar Bartan Nirman Udyog. The contention is that the respondent has never claimed the benefit of this notification and never challenged the assessments which were made on the basis of duty paid at tariff rate, therefore, the refund is not maintainable. The appellant relied upon the decision of Hon'ble Supreme Court in the case of CCE v. Flock (India) Pvt. Ltd. 4. We find that in this case the respondent never claimed the benefit of Notification No. 6/2002 in respect of the goods manufactured by them. The respondents during the period in dispute paid duty at tariff rate, the benefit of notification was claimed first time in the refund application that too without challenging the order of assessment. In these circumstances, in view of the above decision of the Hon'ble Supreme Court, we

find that impugned order is not sustainable hence set aside. The appeal filed by the Revenue is allowed.