

Phosphate Co. Limited Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-22-1997

Reported in : (1998)(102)ELT40TriDel

Appellant : Phosphate Co. Limited

Respondent : Collector of Central Excise

Judgement :

1. This is a miscellaneous application seeking directions to the Commissioner for complying with the Tribunal's Final Order No.146/1995-C, dated 16-5-1995.
2. Learned Counsel stated that in spite of the Tribunal's order and their repeated requests, the officer concerned has not sanctioned the refund due to them as a consequence of their succeeding in appeal. The amount in question had been pre-deposited under Section 35F and was required to be returned as their appeal had been accepted. He would, therefore, request that suitable directions may be given.
3. Learned DR stated that they have received a communication from the Commissioner in this connection mentioning that the Board had been requested to file an appeal against this order in the Hon'ble Supreme Court but they are not able to state the latest position and in these circumstances, the refund has not been paid.
4. In response to further queries from the Bench as to whether any stay has been obtained, learned DR stated that the letter does not make it clear whether any

appeal has been filed since then and, he has no further information in this regard.

5. We find that the learned Counsel is correct that by the aforesaid Tribunal's final order, their appeal had been accepted and therefore, the consequential relief, if any due, was required to be granted.

Hence, pre-deposit of the amount made was required to be returned. This order was passed by the Tribunal on 16-5-1995 and today, it is 17-12-1997. In the normal course, the authorities concerned are expected to and indeed required to comply with the Tribunal's orders promptly. It is, therefore, a matter of concern that in spite of so much time having lapsed, they have not complied with the same. In terms of CEGAT (Procedure) Rule 41, this Tribunal has authority to make such orders or give such directions as may be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or to secure the ends of justice. Therefore, in exercise of the powers vested by virtue of the said Rule, we direct the Commissioner, Calcutta-II to immediately ensure due compliance with the Tribunal's aforesaid order within one month from the date of receipt of this order and report compliance on or before 6-2-1998.

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