

Max India Ltd. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-08-2000

Reported in : (2001)(96)LC375Tri(Delhi)

Judge : P Bajaj, B T K.K.

Appellant : Max India Ltd.

Respondent : Cc

Judgement :

1. This order be disposed of Misc. application filed by the applicants seeking refund of duty amount of Rs. 15 lakhs deposited by them in pursuance of stay order No. 47/94-D dated 22.3.1994 of the Tribunal.

2. The facts giving rise to the application are these. The applicants were saddled with the duty liability of Rs. 3632501/- vide order dated 8.12.1993 passed by the Collector of Customs (Appeals) by classifying their goods under Customs Tariff heading 5503.30 as against heading No.2926.10 as claimed by them. This order of the Collector (Appeals), however was challenged by the applicants before the Tribunal in appeal.

The Tribunal vide Final Order No. 37/96-D dated 17.1.1996 set aside the same and remanded the case to the adjudicating authority for de novo decision. On the basis of this order of the Tribunal, the applicants have sought the refund of the duty amount of Rs. 15 lakhs which they deposited in pursuance of the stay order

No. S/47/94-D passed in their appeal.

3. Ld. Counsel has contended that since the impugned order of the Collector of Customs (Appeals) in which the deposit of Rs. 15 lakhs was required to be made by the applicants had been set aside by the Tribunal, the applicants are entitled to the refund of the same as of right in view of the ratio of case law laid down in: Jash Engineering Ltd. v. CCE Indore 4. On the other hand, Id. SDR has argued that since the de nova proceedings are already pending and had reached at the stage of finalisation, the refund claim of the applicants will be decided by the Department at the appropriate time. She has also produced copy of letter dated 7.11.2000 addressed to her by the Additional Commissioner of Customs, Air Cargo, New Customs House, New Delhi in that regard.

6. Admittedly, the applicants deposited Rs. 15 lacs in pursuance of the stay order of the Tribunal passed in their stay application filed by them in the appeal in which they challenged the correctness of the order of the Collector Customs (Appeal) confirming duty demand on them.

The perusal of the file shows that after passing the Final Order dated 17.1.1996 by the Tribunal setting aside the impugned order of the Collector of Customs (Appeals) and directing the adjudicating authority for de nova decision of the case, the applicants wrote number of letters as detailed in their application, for refund amount of Rs. 15 lakhs deposited by them in pursuance of the afore referred stay order of the Tribunal passed during the pendency of their appeal, against the order of Collector Customs (Appeals). But it is unfortunate that none of the letters of the applicants was attended to in a positive manner by the appropriate authority. Even the de nova proceedings have not been so far completed by the competent authority although over two years have passed after the passing of the remand order of the Tribunal.

7. The competent authority was legally bound to dispose of the refund claim in accordance with the law laid down in the above referred cases, and trade notice referred to above. But they have failed to do so without any sufficient cause. Under the circumstances, the competent authority is directed to dispose of the refund claim of the applicants within the period of six weeks from today in accordance

with the law, failing which the Department will be liable to pay interest at the rate of 10 1/2%, from today onwards on the claimed amount. The adjudication proceedings be also expedited and finalised at the earliest.

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