Dalmia Cement Ltd. Vs. Commissioner of Central Excise

Dalmia Cement Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/28950

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-20-2002

Reported in : (2003)(151)ELT184TriDel

Judge : S T G.R., P Bajaj

Appellant : Dalmia Cement Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The Revenue has sought stay of the Final Order No. 222/89, dated 6-6-89 vide which the appeal of the Respondents was allowed and the Revenue was directed to refund the duty amount to them in the light of the decision of the Apex Court in Mafatlal Industries Ltd. v. Union of India 2. Earlier the stay application of the Revenue was dismissed by the Tribunal on the ground that they had already moved a reference application before the Hon'ble Delhi High Court and the Hon'ble High Court vide its order dated 14-9-2000 had directed the Tribunal to refer the question of law for its opinion. But the Hon'ble High Court has now again issued directions to the Tribunal to hear the stay application on merits.

4. The learned Counsel for the Revenue, has contended that since reference on a question of law involved in the case is pending before the Hon'ble Delhi High Court, the operation of the Final Order against which that reference has been made, deserves to be stayed as payment of huge amount by the Revenue to the assessee before the decision of the Hon'ble High Court, would cause great

hardship and complications.

5. On the other hand, the learned Counsel has contended that the Revenue has no prima facie cases and even the equity and balance of convenience are not in their favour for claiming stay especially when earlier their ROM as well as reference application moved by them before the Tribunal one after the other, were dismissed holding that no case was made out for allowing any of the two applications.

6. We have gone through the records and from the records, we find that after the passing of the final order allowing refund of the duty to the assessees, the Revenue moved an ROM application seeking rectification of the order. But that application was dismissed on merits. They also then made an application before the Tribunal seeking reference to the Hon'ble High Court on a question of law rejecting the applicability of Section 11B to the case where refund had not been actually paid to the assessees in view of the Apex Court judgment in Mafatlal Industries Ltd. (supra). That application was also dismissed by the Tribunal as in the view of the Tribunal no case was made out. No doubt, the Hon'ble High Court vide order dated 14-9-2000 directed the Tribunal to make reference of the following question for its opinion : "Whether Section 11B of the Central Excise Act as amended applies to cases where though the order has been passed directing refund, implementation of the order is pending ?" 7. This question has yet to be decided by the Hon'ble High Court. The Tribunal vide its final order after taking into consideration the ratio of the law laid down by the Apex Court in Mafatlal Industries Ltd. (supra) has allowed the refund of duty to the assessees. In our view, no prima facie case for staying the operation of the order is made out.

The equity and balance of convenience also do not warrant that the operation of the order should be stayed by the Tribunal till the reference is answered by the Hon'ble High Court. No hardship would be caused to the Revenue if they are required to refund the duty which they had collected from the assessee. More over, in case they succeed in the reference, they can seek a proper order from the Hon'ble High Court or the Tribunal for the refund of that amount to them, by the assessee. The Revenue will also be at liberty to ask for the interest on that amount, if permissible, under the law. But a mere pendency of the reference on a question of law, in our view, is not a ground to allow the prayer of the Revenue for stay of the impugned final order.

We, therefore, reject the miscellaneous application filed by the Revenue.