

**Commissioner of Customs Vs. H.B.L. Nife Power Systems Pvt.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Sep-26-2003

**Reported in :** (2003)(158)ELT340Tri(Mum.)bai

**Judge :** K Kumar, S T C.

**Appellant :** Commissioner of Customs

**Respondent :** H.B.L. Nife Power Systems Pvt.

**Judgement :**

1. None appeared for the respondents. Shri A. Chopra, learned J.D.R. appearing for the Revenue states that the Miscellaneous application has been filed by the Applicant Commissioner seeking two specific reliefs:- (1) Till the Reference Application filed by the Department is disposed off by the Hon'ble High Court, Tribunal's Order No. C-II/11/91/WZB dtd.22/05/2003 should be stayed.

2. We have heard the learned J.D.R. and perused the case records. We find that in the aforecited order dtd.22/05/2003, the Tribunal has held that this was a case where inherent power of the Tribunal can be exercised and thereafter has allowed payment of interest to the respondents from 27/04/2001 till 05/03/2003. We also find that a Reference Application has been filed by the Department before the Hon'ble High Court of Bombay on 22/07/2003 against the aforecited order of the Tribunal seeking determination on the following points:- "a) Whether on the facts and in the circumstances of the case the Tribunal was right in Law in granting interest on the predeposit from 27.4.2001 to 5.3.2003 at the prevailing rates

notified under Section 27A of the Customs Act, 1962.

b) Whether on the facts and in the circumstances of the case, the Tribunal was right in Law in awarding interest on predeposit of amount in absence of statutory provision in the Customs Act, 1962.

c) Whether on the facts and in the circumstances of the case the Tribunal being a creature of statute/Act has any inherent power which it can invoke to award interest in the absence of any specific provision in the Customs Act, 1962.

d) Whether on the facts and in the circumstances of the case the Tribunal was right in not appreciating the ratio of Allahabad High Court judgment in Prestige Engineering (India) Pvt. Ltd. v. Union of India 1991 (51) E.L.T. 255 (All) where it was held that if the Act or Rules do not provide for interest then Central Excise Authorities under the Act including Appellate Tribunal are not empowered to award interest.

e) Whether on the facts and in the circumstances of the case the Tribunal was right in not appreciating the ratio of Orissa High Court judgment in Collector of Central Excise and Customs v. Golden Hind Shipping (India) Pvt. Ltd. 1993 (68) E.L.T. 739 (Ori) where it was held that CEGAT has no inherent powers as CEGAT is a creature of statute and it can exercise such powers only which have been conferred by the statute.

f) Whether on the facts and in the circumstances of the case the Tribunal was right in not appreciating the ratio of Bombay High Court judgment in Suvidhe Ltd. v. Union of India, 1996 (82) E.L.T. 177 (Bom) where it was held that deposit is not a payment of duty but only a predeposit for availing the right of appeal.

g) Whether on the facts and in the circumstances of the case the Tribunal was right in not appreciating the ratio of judgment of Bombay High Court in Killick Caribonium v. Union of India, 2002 (143) E.L.T. 491 (Bom) where it was held that deposit under Section 35 F of Central Excise Act, 1944 bears character of Security deposit and not duty.

h) Whether on the facts and in the circumstances of the case the Tribunal was right in not appreciating the judgment of Bombay High Court in *Nelco Limited v. Union of India*, 2002 (144) E.L.T. 56 (Bom) where it was held that amount deposited under Section 35 F as a condition precedent to hearing an appeal does not bear the character of duty but has character only of Security deposit.

i) Whether the CEGAT was right in not appreciating the ratio of judgment passed vide order No. C II/799-808/WZB/2003 dated 22.4.2003 in case of *M/s. Akai Impex Ltd.; K.L. Dhingra v. Commissioner of Customs*, wherein the same bench as in the instant case had held that "The Tribunal is a creature of the statute and in exercise of its functions cannot go beyond the limits of the statute. That being the case we do not have powers to order payment of interest by the importer." 3. The Applicant Commissioner has sought stay of the aforesaid Tribunal order in the light of the Apex Court's decision in the case of *Commissioner of Income Tax, Delhi v. Bansi Dhar and Sons* - 1986 (24) E.L.T. 193 (S.C.). In the said case, in Para 41, the Apex Court has held as follows:- "Therefore, in our opinion it cannot be said that the High Court has inherent power or incidental power in the matter of a reference pending before it to grant stay of realization or to grant injunction. That must remain within the jurisdiction of the appellate authority and pendency of a reference does not detract from that jurisdiction of the appellate authority." 4. In view of the ruling of the Apex Court as above and considering the fact that the incidental power to grant stay of an order of the Tribunal against which Reference Application has been filed before the High Court remains with the Tribunal, we are of the opinion that this is a fit case for exercising such incidental power and accordingly, we stay the operation of the Tribunal's order dtd.22/05/2003 till disposal of the Department's Reference Application by the Hon'ble High Court of Bombay.

5. As regards the applicant Commissioner's prayer for rectification of the dates, the same can only be considered after receiving the decision of the Hon'ble High Court of Bombay on the Reference Application. As such, consideration of the same is kept pending.