

**ioc Ltd. Vs. Cce**

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

**Decided On :** Oct-17-2003

**Reported in :** (2004)(91)ECC46

**Judge :** A T V.K., P Chacko

**Appellant :** ioc Ltd.

**Respondent :** Cce

**Judgement :**

1. Shri S. Ganesh, learned Sr. Advocate, submitted that the Committee on Disputes in its meeting held on 14.5.2003 has permitted the applicants M/s. IOC Ltd. to pursue the Appeals in CEGAT in view of substantive question of fact and law involved in the matter. In view of this, we recall our Final Order No. 101-10/2001-C dated 16.7.2001 and restore the appeals to their original Numbers.

2. Arguing on the stay applications, the learned Senior Advocate, submitted that the issue involved in all these appeals is whether low sulphur heavy stock captively consumed by them, is eligible for exemption from Central Excise duty; that on this aspect, the Appellate Tribunal in their own case has granted the stay vide Stay Order No.86/2000-C dated 18.10.2000 and Stay Order No. 50/2001-C dated 3.8.2001; that further, the benefit of Notification from payment of duty has also been extended to them by the Tribunal in their own case vide Final Order No. 197/06/2000-C dated 11.9.2002 relying upon the Board's Circular dated 6.7.83. He, further, mentioned that in another case of the Appellants themselves, the

Tribunal vide Final Order No.434-435/2000-C dated 5.9.2000 had disallowed the benefit of the exemption Notification. He, finally, submitted that when their Appeal against the said decision came up for hearing before the Supreme Court on 18.8.2003, the Hon'ble Supreme Court has observed that the Tribunal had given the benefit of exemption Notification in view of the Board's Circular having been brought to the notice of the Tribunal; that the Hon'ble Court has given the time to the Government Counsel to obtain instructions and the matter is to come up before the Supreme Court shortly.

3. We also heard Shri V. Valte, learned Senior Departmental Representative who submitted that in view of the decision the Tribunal dated 5.9.2000 applicant should be directed to make the deposit.

4. We have considered the submissions of both the sides. In view of the conflicting decisions taken by the two different Benches of the Tribunal, the applicants have made out a strong prima facie case for waiver of pre-deposit of entire amount of duty. Further, we also observe that the Hon'ble Supreme Court has already ceased all the matter and is likely to hear the matter shortly. In view of this, we stay the recovery of the entire amount of duty and penalty and all the Appeals are posted for regular hearing on 15.12.2003.

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