

Commissioner of Central Excise Vs. N.M. Nagpal

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-05-2004

Reported in : (2005)(180)ELT204TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : N.M. Nagpal

Judgement :

1. In this appeal, the controversy centres round the question, as to whether the respondents are legally entitled to claim the interest on the refund of the pre-deposit amount.
2. The Commissioner (Appeals) has allowed the interest by following an earlier order dated 22-1-2002 passed by another Commissioner (Appeals) in another case and which, according to him, was also affirmed by the Tribunal vide Final Order, dated 7-11-2002.
3. I have heard both sides and gone through the record. The facts are not much in dispute. The respondents made pre-deposit of Rs. 4 lakhs in compliance with the Tribunal's stay order dated 14-3-2000. This deposit was made by them in the appeal wherein they challenged the order-in-appeal of the Commissioner (Appeals) confirming the duty and penalty on them. The Tribunal thereafter vide final order dated 20-9-2000 accepted the appeal of the respondents and set aside

the order under appeal. The respondents thereafter filed refund claim seeking refund of the pre-deposited amount on 21-5-2001. The refund was accordingly allowed to them on 17-8-2001, within three months of the filing of the application for refund by them.

4. The learned Counsel has contended that from the date of the Tribunal's order i.e 20-9-2000, the respondents are entitled to interest on the pre-deposited amount and as such the same has been rightly allowed to them. But, I am unable to subscribe to this contention of the learned Counsel. The bare perusal of the provisions of Section 11BB which relates to the interest on the delayed refund, it is quite evident that the interest can be claimed only if the amount has not been refunded to an assessee within three months from the date of filing of the application for refund. Therefore, the appellants could claim interest on the refund of the pre-deposited amount only if it had not been paid to them within three months of their filing of an application for the refund. It is quite evident that the refund claim was allowed to the respondents within three months from the date when they moved an application for the refund. The argument of the learned Counsel that no application was required to be moved by the respondents for refund and that the Department itself was duty bound to make the refund immediately on the date of pronouncement of the order of the Tribunal in their favour, is wholly mis-conceived and not warranted by law. The pre-deposit was made in compliance with the CESTAT order. In the final order, the Tribunal neither fixed any date for the refund of the pre-deposited amount to the respondents nor gave any specific direction. Therefore, the respondents did not become entitled to the interest from the date of passing of the order of the Tribunal. They applied for the refund to the Department only on 21-5-2001 and the Department has refunded the amount within three months from that date.

Therefore, the view taken up by the Commissioner (Appeals) simply by following the earlier order of the Commissioner (Appeals) dated 21-1-2002 without referring to the facts and circumstances of the case, that the respondents are entitled to interest from the date of order of the Tribunal, is legally not sustainable.

5. Consequently, the impugned order passed by the Commissioner (Appeals) allowing the interest to the respondents is set aside and the appeal of the Revenue is allowed. The Cross Objections which are, in fact, reply to the appeal filed by the respondents praying for the rejection of the appeal by the Revenue, are dismissed.

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