**C.M. Prints Pvt. Ltd. Vs. C.C.E.**

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**SooperKanoon Citation** : sooperkanoon.com/37511

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

**Decided On :** Dec-24-2004

**Judge** : M T K.C.

**Appellant** : C.M. Prints Pvt. Ltd.

**Respondent** : C.C.E.

**Judgement** :
1. The appellants filed refund claim of Rs. 1,98,528/- on 24.4.03 consequent to the order-in-Appeal dated 27.3.2003 passed by the Commissioner (Appeals) in their appeal. The refund claim was sanctioned to them. But no finding was given on their request for interest. They, therefore, filed an application for refund of interest and the Asstt.

Commissioner, Division - V, under his letter dated 4.9.03 informed them the under section 11BB of Central Excise Act, there is no provision of interest for the whole period from the payment of duty to the sanction of claim. Their claim was received in his office on 24.4.2003 and the same was sanctioned on 17.7.2003 within three months. Against this letter, they filed appeal before the Commissioner (Appeals). The Commissioner (Appeals) after considering their pleas, came to the conclusion that refund arose as a consequential relief as their appeal appeal was allowed. The refund was allowed within three months of is filing. Therefore, he rejected the appeal.

2. The appellants in their appeal petition have pleaded that they has deposited the amount of duty immediately when additional demand was created against them. The case was ultimately decided in their favour by the Supreme Court. Thus during the period, the appellants wee deprived of the amount deposited under protest by squeezing finances from the business and hence they are entitled for interest, which has been denied to them by the lower authorities.

3. Shri P.M. Rao, ld. JDR appearing for the Revenue pleaded that there is a clear provision under Section 11BB of the Central Excise Act under the Explanation of the said Section that where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any Court against an order of Asstt. Commissioner of Central Excise, under sub-section (2) of Section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the Court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this Section. In view of this clear position, since the refund arose consequent to the order passed by the Commissioner (Appeals) on 27.3.03 and the refund claim was sanctioned within three months from the date of filing such claim, the appellants are not entitled for any refund claim.

4. Considering the submissions put forward by both the sides, I find that as per Explanation to Section 11BB, the appellants are not entitled for any interest as the refund was sanctioned within three months from the date of filing the refund application consequent to the order of the Commissioner (Appeals). Therefore, there is no merit in the claim of the appellants and accordingly, the appeal is rejected.