

ilpea Paramount Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-25-2005

Reported in : (2005)(188)ELT523TriDel

Judge : A T V.K.

Appellant : ilpea Paramount Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. In this Appeal filed by M/s. ILPEA Paramount Ltd., issue relates to interest on pre-deposit made by them as per order passed by the Appellate Tribunal.
2. Shri K.L. Handa, learned Consultant, mentioned that the appellants as per Stay Order No. 24-26/02-C dated 14-12-2001, deposited the amount of Rs. 5 lakhs on 7-2-2002; that their Appeal was, finally, allowed by the Tribunal vide Final order dated 23-4-2002; that they submitted an application for refund of amount of Rs. 5 lakhs on 5-6-2002 and the amount so deposited was refunded to them on 4-10-2002; that as such they are eligible for the interest on the amount of Rs. 5 lakhs deposited by them from 23-7-2002 to 4-10-2002. Learned Consultant has relied on the decision in the case of CCE, Hyderabad v. ITC Ltd. [2005 (179) E.L.T. 15 (S.C.)] and Board's Circular No. 802/35/04-CX, dated 8-12-2004. He contended that it is mentioned in the Board's Circular that pre-deposit shall be returned within a period of three months of the disposal of appeals in the assessee's favour and delay beyond this period of three months will be viewed adversely and they will

entail an interest liability. Learned Consultant submitted that it is thus clear that if the amount of pre-deposit is not refunded within 3 months of the date of Final Order, the interest is to be paid from the said date.

He also relied upon the Board's Circular letter F.No. 275/37/2000-CX., dated 8-8-2002 wherein it is mentioned that refund application need not be insisted upon in the case of return of deposits made under Section 35F of the Central Excise Act and a simple letter from the person who has made such deposits will suffice for the purpose.

3. Countering the argument Shri P.M. Rao, learned Departmental Representative reiterated the findings as contained in the impugned order.

4. I have considered the submissions of both the sides. Admittedly the application for refund of the amount deposited by them, as per Stay licants (sic) only on 5-6-2002. No doubt the Central Board of Excise & Customs has mentioned in its letter dated 2-1-2002 that no formal application under Section 11B(1) of the Central Excise Act is required for the refund of pre-deposit amount. The Board, has however, further mentioned that a simple letter from the person who has made such a deposit requesting for return of the amount along with an attested Xerox copy of the Order-in-Appeal or Tribunal's Order consequent to which deposit made become returnable and an attested Xerox Copy of the Challan in form TR 6 evidencing payment of duty has to be submitted to the Department. In absence of such documents, the refund of amount of pre-deposit cannot be undertaken by the Department. These documents have not been furnished by the appellants immediately after the Tribunal has allowed their Appeal i.e. on 23-4-2002. These papers have been given possibly with the refund application on 5-6-2002 only. The Supreme Court decision as well as Board's Circular dated 8-12-2004 nowhere provides that the interest will be admissible to the claimant if the amount of pre-deposit is not refunded within three months of the Final Order passed by the Tribunal. The provisions relating to interest are contained in Section 11BB of the Central Excise Act only, according to which the interest is payable if the refund is not made within three months of the receipt of the application. As in this case the application for refund has been made on 5-6-2002, the appellants are eligible for

the interest for the period from 5-9-2002 to 4-10-2002 only. The Appeal is disposed of accordingly.

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