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**King WIn Johnson (India) and ors. Vs. Cce**

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**SooperKanoon Citation** : sooperkanoon.com/38853

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

**Decided On :** Apr-26-2005

**Reported in** : (2006)(193)ELT76TriDel

**Judge** : S Kang, Vice-

**Appellant** : King WIn Johnson (India) and ors.

**Respondent** : Cce

**Judgement** :

2. The appellants filed these appeals against the order in appeal whereby the prayer to grant interest on the late payment of pre-deposit is declined.

3. The contention of the appellants is that they had deposited Rs. 4 lakhs in each case as pre-deposit. The Tribunal vide order dated 08.02.2000 set aside the demand and remanded the matter to the Adjudicating authority to decide afresh. The contention of the appellants is that the amount of pre-deposit was refunded to the appellants on 22.12.2000. The contention of the appellants is only that they are entitled for interest applicable during the relevant period from the 3 months from date of the final order till the date of refund.

Appellants relied upon the decision of the Tribunal in the case of India Thermoplastics (P) Ltd. Vs. Commissioner of Customs, Kolkata, reported in 2004 (164) ELT 156 (Tri-LB) and Max India Ltd. Vs.

Commissioner of Customs, New Delhi, reported in 2001 (129) ELT 233 (Tri-Del.). In this case undisputed facts are the appeals by the Tribunal under Section 35F of the Central Excise Act. The Tribunal vide Final order dated 8.2.2000 set aside the demand and remanded the matter back to the Adjudicating authority to decide afresh.

4. The contention of the Revenue is that in pursuance to the remand order, the proceedings were dropped on 28.8.2000 and the refund was granted on 22.12.2000 i.e. within three months from dropping of the proceedings.

5. In these circumstances, I find merit in the arguments of the appellants that the interest on the refund of pre-deposit is available to the appellants from passing of the order by the Tribunal. The Section 11BB of the Central Excise Act provides that the assessee is entitled for the interest on the delayed refund. The assessee is entitled for the interest after three months from the due date.

further, I find that in the case of Commissioner of Central Excise, Hyderabad Vs. ITC Ltd., reported in 2005 (179) ELT 15 (SC) before the Hon'ble Supreme Court the Revenue produced a Circular issued by Central Board of Excise and Customs to the effect that whereby it is clarified the payment of interest is applicable on such delayed refund beyond the three months. The Tribunal also in the decision relied upon by the appellants held that the interest is payable from the date of expiry of three months from the date of final order till the date of payment. In these circumstances, the appellants are entitled for the interest on the refund after three months from the date of final order passed by the Tribunal as applicable during the relevant period. The appeals are disposed of as indicated above.

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