

Commissioner of Central Excise Vs. Doon Polymicrons Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-26-2005

Reported in : (2005)(188)ELT349TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Doon Polymicrons Pvt. Ltd.

Judgement :

1. None for the respondents, no request for adjournment has been received from them. Therefore, I proceed to decide the appeal on merits.
2. In this appeal which has been filed by the revenue against the impugned Order-in-Appeal, the issue relates to the entitlement of the respondents to claim the interest on the amount of refund to them vide order dated 18-8-2000 by the adjudicating authority.
3. I have heard Id. SDR and gone through the records. The respondents had claimed interest vide their letter dated 10-5-2000, on account of delayed payment of refund claim of Rs. 98217/-. They had claimed interest as the refund claim was sanctioned on 19-6-2001 by the Order of the Tribunal, but it was not paid within three months. But their demand of interest is wholly unjustified. The perusal of the record shows that they initially filed the refund claim on 6-8-96, but it was rejected by the Assistant Commissioner vide Order dated 27-6-97 on the ground that they

had failed to furnish the requisite documents especially original copy of AR 4. That order of the Assistant Commissioner was confirmed by the Commissioner (Appeals) vide order dated 12-5-98. Thereafter they filed the appeal before the Tribunal against the Order of the Commissioner (Appeals) Tribunal vide order dated 3-5-2000 disposed of the appeal and the perusal of that order shows that no refund was sanctioned in favour of the respondents.

Rather, the case was remanded to the Assistant Commissioner for fresh decision as the respondents alleged of having produced AR 4 and shipping bills etc. when they submitted the reply to the show cause notice. The Tribunal only directed the Assistant Commissioner to decide the matter afresh with the observations that the respondents will be able to use this opportunity to substantiate their claim by adducing evidence which they could not earlier produce.

4. After the remand the respondents submitted the copies of the shipping bills, AR 4 copy and letter from the Joint DGFT and thereafter the Assistant Commissioner decided the matter and allowed the rebate claim of Rs. 98217/- to the respondents. This order was passed by him on 18-8-2000. The refund was accordingly made available to the respondents within three months of the passing of that order.

5. The respondents could claim the interest, if the payment had not been paid to them within three months of passing of the order of the Assistant Commissioner sanctioning the refund claim. No right to claim the rebate accrued to them on the date of passing of remand order by the Tribunal detailed above, and as such no interest can be claimed by them by calculating three months from the date of passing of said order of the Tribunal. The adjudicating authority has rightly declined the request of the respondents for interest as the payment was made to them within three months of sanction of rebate claim. The view taken by the learned Commissioner (Appeals) that the interest was payable to the respondents within three months from the date they initially filed the refund claim is wholly erroneous in the light of facts and circumstances detailed above. Therefore, the impugned order passed by the Commissioner (Appeals) is set aside. The appeal of the Revenue is allowed.

