

Himson Textiles Engineering Vs. the Commisioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-25-2005

Judge : A Wadhwa

Appellant : Himson Textiles Engineering

Respondent : The Commisioner of Central Excise

Judgement :

1. The dispute between the appellant and the revenue was settled by the Tribunal in favour of the appellant vides its order no. 470/2000/B dated 29.03.2000 when their appeal was allowed with consequential relief. As such, appellant became entitled to refund of Rs. 3,20,473/- which was sanctioned by the Deputy Commissioner vide his order dated 08.04.2002. However, they were not given any interest on the said refunded amount. Being aggrieved with the said order on the point of interest appellant filed an appeal before Commissioner (Appeals).

Appellate authority observed that the appellate did not make any request for grant of interest at the time of filing refund claim and as ht order of Deputy Commissioner did not discuss the issue of interest, appeal on the said point cannot be entertained.

2. However, I feel that entitlement to interest is not dependent upon the appellant making a request to that effect. Interest is integrally associated with claim of refund, and in case of grant of refund, interest accrues to the assessee in terms of the provisions of Section 11B irrespective of the fact whether the claimant has

demanded or not.

The provision of Section 11B and 11BB are to be read in conjunction and are to be followed as being mandatory and when refund is sanctioned, the proper officer has no discretion to ignore or grant of due interest payable according to law. It is now well decided that interest provisions are applicable even to the refund of the duty arising as a consequence of allowing of the appeal. Accordingly, I set aside the impugned order and direct the Deputy Commissioner to quantify the interest in accordance with the provisions of Section 11-BB and in the light of the various precedent decision of the Tribunal on the said point.

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