

**L and T Ltd. Vs. Commissioner of Customs**

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

**Decided On :** Aug-26-2005

**Reported in :** (2005)(189)ELT179TriDel

**Judge :** N T C.N.B., P Bajaj

**Appellant :** L and T Ltd.

**Respondent :** Commissioner of Customs

**Judgement :**

1. The claim in this appeal of Larsen & Toubro Limited is for payment of interest.
2. The appellant had imported certain machinery in 1996 and claimed certain exemption. A bank guarantee was executed in January, 1997.

Under order of adjudication dated 13-12-99, the appellant's claim for exemption was rejected. The bank guarantee filed by the appellant was encashed and an amount of about Rs. 1.05 crore was realised on 10-5-2000. The appellant filed an appeal against the order of adjudication, along with stay application. When the stay application came up for hearing before the Commissioner (Appeals), it was submitted that an amount of over Rs. 1.05 crores already remained realised through the encashment of the bank guarantee and Commissioner (Appeals) waived the requirement for further pre-deposit and heard the appeal.

The appeal was subsequently allowed under an order dated 28-9-2000 (issued on 3-10-2000). The appellant filed refund application on 8-12-2000 claiming the return

of the amount realised in terms of the bank guarantee. The Revenue filed an appeal before this Tribunal against the order of the Commissioner (Appeals), along with stay application. The stay application was rejected vide order dated 2-2-2001. Later, the appeal of the Revenue was rejected under order dated 23-3-2001. The refund application of the appellant was allowed on 6-9-2001 without granting any interest. The appellant filed an appeal before the Commissioner (Appeals) seeking payment of interest, for the period from three months from the date of allowing of their appeal by Commissioner (Appeals). That appeal was rejected by the Commissioner with the following observation in para 7 of the order : "7. In the cases relied upon by the appellant the issue was refund of pre-deposit of the duty. In the instant case the BG was encashed not in lieu of pre-deposit but as a consequence of an order of the competent authority. Had the department not encashed the Bank Guarantee, it would have remained as such and would have been released as such after the decision of the Hon'ble Tribunal. No interest was claimable in respect of return of such Bank Guarantee.

Merely because the department encashed the same, the appellant does not become entitled for interest".

3. The contention of the learned Counsel for the appellant is that the claim for interest was required to be settled in terms of the judgment of the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Hyderabad v. ITC Ltd., reported in 2005 (179) E.L.T. 15 (S.C.) wherein the Hon'ble Supreme Court has observed that interest will be payable in terms of the circular issued by the Revenue. A copy of that circular, bearing No. 802/35/2004-CX, dated 8-12-2004 was also annexed to the judgment. It is the submission of the learned Counsel that the circular specifically has held that in respect of final orders, amounts pre-deposited must be returned within three months from the date of the order passed by the appellate authority, failing which interest will be payable. Reliance has specifically been placed on 3 and 4 paras of the circular. We reproduce these paras : "3. The Board has noted the observations of the Hon'ble Supreme Court in its order dated 21-9-2004 and has decided that pre-deposits shall be returned within a period of three months of the disposal of the appeals in the assessee's favour.

4. Accordingly, the contents of the Circular No. 275/37/2000-CX.8A dated 2-1-2002 [2002 (139) E.L.T. T38], as to the modalities for return of the pre-deposits are reiterated. It is again reiterated that in terms of Hon'ble Supreme Court's order such pre-deposit must be returned within 3 months from the date of the order passed by the Appellate Tribunal/Court or other Final Authority unless there is a stay on the order of the Final Authority/CESTAT/Court, by a superior Court".

4. The contention of the learned Counsel is that, in the present case, since the refund had become due to the appellant in terms of order dated 28-9-2000 of the Commissioner (Appeals), the interest starts on the lapsing of three months from the date of that order and the authorities were wrong in denying them the interest.

5. The claim is opposed by the learned SDR on many grounds. The first objection is that the refund application dated 8-12-2005 filed by the appellant had raised no claim for interest at all and therefore fresh claim cannot be subsequently raised. It is also being pointed out that the final order in the present case would be order of the Tribunal dated 23-3-2001 rejecting the appeal filed by the Revenue and therefore in terms of the circular dated 8-12-2004 of the Revenue, interest can start only upon the lapse of three months from the order of the Tribunal (from 23-3-2001). The learned SDR has also brought to our notice many... judgment of the Bombay High Court in the case of Voltas Ltd. v. Union of India and the decision Pace Marketing Specialities Ltd. v. CCE, Ghaziabad contention. The learned SDR also has a contention that realisation of amounts in terms of encashed bank guarantee is not payment of duty so as to attract interest. In support of this contention he has relied on the judgment of the Apex Court in the case of Oswal Agro Mills Limited - .

6. There had been many decisions prior to the judgment of the Hon'ble Supreme Court in the case of ITC Ltd., but that judgments was rendered upon the agreement of the revenue to issue the above mentioned circular on the issue of interest on delayed return of pre-deposits. The circular in question forms part of the judgment. In this background, we are of the opinion that all pending matters should be disposed of in terms of the circular and the judgment in the case of ITC. We are not able to find merit in the contention that claim for interest was required

to be made along with refund application. This is to presume that refund claims would not be paid within the normal period and based on that presumption, claim for interest should be made along with the claim for return of pre-deposit. The second objection that encashment of bank guarantee is not payment of duty is not supported by the judgment of the Apex Court in the case of Oswal Agro Mills. A perusal of that judgment makes it clear that bank guarantee, once encashed, is realisation of payment. The Commissioner was therefore in error in holding that a payment towards duty due received by the Revenue by encashing bank guarantee was not payment of duty. We are also of the opinion that the final order in the present case has to be treated as the order in favour of the appellant passed by the Commissioner (Appeals). The subsequent order of the Tribunal has only confirmed the order of the Commissioner. Therefore, that is the order which became final. A contrary view would be justifying the delaying of refunds and interest payment for delayed refund through a process of filing futile appeals to higher and higher authorities. We feel that such a view would not be correct and just. The circular of the Board clearly covers payments made in terms of Section 129E of the Customs Act and Section 35F of the Central Excise Act. Both these sections stipulate that an appellant has to deposit, before filing the appeal, the duty and penalty imposed under the order challenged. The proviso to these Sections provide that the appellate authorities, be it Commissioner (Appeals) or CESTAT, can grant waiver of the requirement of the pre-deposit. Therefore, irrespective of whether the amount had been fully deposited by appellant before filing the appeal or whether the deposit was in terms of a order on a stay application, the amount remains pre-deposit under Section 129E or 35F and all those pre-deposits have to be dealt with in terms of the judgment of the Apex Court and Circular of the Board.

7. From what is stated above, it is clear that the appellant had pre-deposited the duty and it was required to be returned within three months from the date of the order of the Commissioner, allowing the appeal and not three months from the date of CESTAT order. Interest is required to be paid for the period beyond three months from the Commissioner's order. The appeal is ordered accordingly after setting aside the impugned order.