

Commissioner of Central Excise Vs. Indo Plast Engineers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-28-2005

Judge : T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : indo Plast Engineers

Judgement :

2. The Commissioner (Appeal) in his impugned order has allowed interest on the refund claim filed by the assessee under Section 11BB distinguishing the ratio held in the case of Oswal Agro Mills Ltd. v. Assistant Collector of Central Excise, Ludhiana, reported in 1994 (70) E.L.T. 48 (S.C.), wherein it is held that the Bank Guarantee furnished by the assessee under court's order to secure the revenue does not amount to payment of excise duty. Court case ultimately decided in favour of the assessee, but the Bank Guarantee already enclosed by the Revenue. In the said circumstances, it is held that provision to Section 11B of the Central Excise Act, 1944 is not applicable for refunding the same. The contention of the Department is that Section 11B does not apply, Section 11BB also cannot be made applicable for payment of interest. Furthermore, it is the submission that in the instant case also, the Bank Guarantee was furnished as security for payment of excise duty and ultimately it was refunded, which shall not carry any interest and according to him, where the duty amount is refundable, the interest can be charged for the delayed payment.

3. Having found prima facie case in favour of the Department, the impugned order is stayed from its operation, provided if the interest is not paid by the Department already. Order accordingly. List the appeal in its turn.

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