

Continental Petroleum Ltd. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-07-2006

Reported in : (2006)(106)ECC428

Judge : M Ravindran

Appellant : Continental Petroleum Ltd.

Respondent : Cc

Judgement :

1. This appeal is directed against the order in appeal dated 24.12.2005, wherein the Commissioner (Appeals) upheld the order in original granting the interest to the appellant.

2. The brief facts of the case are : Appellants imported waste oil and classified the same under Heading No. 28.23 of CTA. The said classification was not accepted by the Assistant Collector and he classified the same under 3403 of CTA and directed the appellants to pay appropriate duty and CVD. On appeal from this order in original the Commissioner (Appeals) upheld the said adjudication order. The appellants preferred a stay application and appeal against the said order in appeal to the Tribunal. Tribunal while disposing the stay application directed the appellant to pre-deposit an amount of Rs. 22,30,000/- which was complied by the appellants. The appellant's appeal was allowed by the Tribunal vide Order No. 56-57/2000-C dated 21.1.2000, On succeeding in the appeal the appellants preferred a refund claim for the amount of pre-deposit made by them along with interest

from the date of pre-deposit. The adjudicating authority granted the refund of the amount of Rs. 22.30.000/- to the appellant vide order dated 23.7.2002 but rejected the claim of interest. Against this order of rejection of interest the appellants filed an appeal before the Commissioner (Appeals) who vide his order dated 9.7.2003 accepted the contention of the appellants and allowed the appeal, but directed the adjudicating authority to grant interest for a limited period and the interest as provided under Section 27A of the Customs Act 1962. The adjudicating authority vide his order in original dated 13.8.2003, following the direction of the Commissioner (Appeals) order dated 9.7.2003 granted an interest of Rs. 339002/- at the rate as was prevalent during the time and took the date of filing of the refund claim as the date from which the interest is payable. This was not acceptable to the appellant and he preferred an appeal to the Commissioner (Appeals) who in his order in appeal dated 24.12.2003, upheld order in original dated 13.8.2003 as being correct relying upon the provisions of Section 27A of the Customs Act 1962. This appeal is directed against this order.

3. The learned Advocate submits that his grievance is in respect of the period for which refund of interest is paid and the rate of interest.

He submits that the Board's Circular dated 8.12.2004 is applicable in this case and the interest has to be granted from date of final disposal of the appeal by the Tribunal i.e. from 21.1.2000 and the rate of interest should be 12% as is approved by the Honble Supreme Court in the case of CCE, Hyderabad v. ITC Ltd. 2005 (179) ELT 15 (SC).

4. The learned DR on the other hand submits that the refund interest is sanctioned by order in original is correct and the order in appeal does not require any modification. He submits that the period is also correctly calculated i.e. from the date of filing of the refund claim and the rate of interest is also correctly worked out based on the provisions of Section 27A of Central Excise Act 1962.

5. Considered the submissions made by both sides and perused the records. I find that it is not disputed that the appellant has pre-deposited an amount of Rs. 22,30,000/- as per direction of the Tribunal. It is also not in dispute that the appellant's appeal was allowed by the Tribunal by its order dated 21.1.2000.

6. I find on perusal that the interest granted to the appellant is in respect of three amounts which totalled comes to 22,30,000/-, But the period of the interest worked out from dates which are not cohesive.

The appellants claim is that the interest at the rate of 24% is liable to be paid by the department from the date of the pre-deposit. I find that the appellant has not produced any data regarding the pre-deposit dates, The Larger Bench of this Tribunal in the case of Sheela Foam Pvt. Ltd. v. CCE, Noida has held that interest is payable on the amount deposited by the assessee. The Tribunal to come this conclusion, relied upon the decision of the Hon'ble Supreme Court in the case of Kuil Fireworks Industries v. CCE . Hence it is settled law that the interest is payable on the amount of deposits made by the appellants in / pursuance to the direction by Tribunal. The Board taking note of the decision of the Hon'ble Supreme Court issued a Circular 275/37/2000- CX-8A dated 2nd January 2002 wherein the Board had indicated that delay in refund would invite liability for interest.

The Board issued a circular No. 802/35/2004-CX. Dated 8.12.2002 which is reproduced below: Reference earlier instructions on the above subject and looking to the instances arising out of non-implementation of the judicial orders, the Board has reason to review and reiterate the earlier Circulars on the subject of non-implementation of orders of CESTAT or any Final Authority in relation to returning pre-deposits made as per directions of CESTAT or any other Final Authority in terms of Section 35.F of the Central Excise Act, 1944 & Section 129E of the Customs Act, 1962. The Board has taken a strict view with regard to non-returning of such deposits.

2. As we are all aware the CESTAT has in a number of such cases awarded interest on pre-deposits where its orders have not been implemented and the Department had challenged this and filed Civil Appeals in the Supreme Court.

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 pro-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.

5. Delay beyond this period of three months in such cases will be viewed adversely and appropriate disciplinary action will be initiated against the concerned defaulting officers. All concerned are requested to note that default will entail an interest liability, if such liability accrues by reason of any orders of the CESTAT/Court, such orders will have to be complied with and it may be recoverable from the concerned officers.

and ensure their implementation through a suitable monitoring mechanism, field formation may be suitably informed. Copies of the instructions issued may be endorsed to this office for information.

7. Commissioners under your jurisdiction should be advised that similar matters pending in the High Courts must be withdrawn and compliance reported. The Board has also decided to implement the CESTAT Orders already passed for payment of interest and the interest payable shall be paid forthwith, From the above circular it is very clear that the Board has reiterated that the refund of pre-deposit should be sanctioned within 3 months from the date of the order passed by the Appellate Tribunal unless the same is stayed by higher judicial FERA.7. From the facts of the case before me, the order of the Tribunal dated 21.1.2000 is not stayed by any higher authority. Hence the interest that is payable to the appellant, as per Boards circular dated 8.12.2004 (supra) would start working from three months after 21.1.2000 i.e. from 20.4.2000. The appellant is eligible to interest from 20.4.2000 as per the Board's circular till the date of refund i.e. in this case till 23.7.2002. It is a settled law, that the Revenue cannot argue against the Boards direction and hence the DR's argument on the period of interest is rejected.

8. Since the Board has followed the direction of the Hon'ble Supreme Courts decision in respect of the period for interest is payable, the appellants claim for the

interest from the date of pre-deposit till the refund date is also unsustainable and rejected.

9. As regards the rate of interest, I find that the provisions of Section 27A of the Customs Act, 1962 are not applicable in this case. In the same breath, I also find that the claim of the interest of 24% by the appellant is also without any justifiable reason. As is held by the Hon'ble Supreme Court in the case of CCE Hyderabad v. ITC Ltd. (supra) a rate of interest of 12% will be justified to meet the ends of justice.

10. In view of the above situation, the order in appeal deserves to be modified. The impugned order is modified to the extent as indicated above and appeal allowed.

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