

Commissioner of Central Excise Vs. Apr Packaging Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-17-2006

Judge : J Balasundaram, Vice-, A T K.K.

Appellant : Commissioner of Central Excise

Respondent : Apr Packaging Industries Ltd.

Judgement :

1. The Revenue seeks stay of operation of the order of the Commissioner of Central Excise (Appeals) who has sanctioned the claim for refund of service tax of Rs. 18,49,683/- covering the period 16-11-1997 to 2-6-1998.
2. None appears for the respondents; hence we heard the Id. SDR and perused the records.
3. We find that the Commissioner (Appeals) has entirely relied upon the Tribunal's decision in the case of L.H. Sugar Factories Ltd. to hold that the assesseees are entitled to the refund. However, we see prima facie force in the contention of the Id.

SDR that the judgment of L.H. Sugar Factories Ltd. would apply to a case where the department raises demand for recovery of service tax and will, prima facie, not cover the situation in the present case, where the service tax has voluntarily paid by the assesseees but has sought refund. We, therefore, see merit in the prayer of the department for stay of operation of the impugned order. We accordingly allow

the applications by granting the prayer for stay.

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