(2003) 11 SC CK 0112

In the Supreme Court Of India

Case No : I.A.Nos.7-9 In Civil Appeal Nos.1825-1827 Of 2002

Commissioner of Central Excise, Delhi APPELLANT

Vs

Frick India Ltd. RESPONDENT

Date of Decision : 10-11-2003

Acts Referred:

Citation : (2003) ECR 813 : (2003) 158 ELT 431

Hon'ble Judges : Doraiswamy Raju, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Soli J. Sorabjee, AG and B. Krishna Prasad, for the Appellant; Rupesh Kumar and Tara Chandra Sharma, for the Respondent

Final Decision : Disposed Of

Judgement

1. The above applications have been filed seeking for a clarification of the earlier order of stay passed by this Court on 1-3-20022 in Civil Appeal Nos. 1825-1827 of 2002 and also for stay of the operation of the order dated 26-8-2003 passed by the Tribunal directing the Revenue to refund the amount of Rupees One Crore deposited as pre-deposit pursuant to the order dated 10-8-2000 within a period of four weeks with interest @ 12% from the date of expiry of three months from the date of receipt of final order dated 18-9-20013 (the date on which the appeals filed before the Tribunal came to be disposed of against which the appeals have been filed in this Court and are pending) till date of payment.

2. Heard the learned Attorney General appearing for the Revenue and the learned Counsel for the respondents.

3. Though, having regard to the specific terms of the order of stay granted by this Court on 1-3-2002 it is seen that it is the proceedings in remand that are stayed, the question that requires to be considered is as to whether pending disposal of the appeals in this Court, the amount remitted as pre-deposit, pending disposal of the appeal before the Tribunal, has to be ordered to be refunded, as has been done by the Tribunal even when, the appeals against the

final orders made by the Tribunal are pending in this Court. The learned Counsel for the manufacturer-respondent in the appeals before this Court submits that they are prepared to give bank guarantee and the amount may be directed to be refunded as against the bank guarantee to be furnished therefore. The learned Attorney General has no serious objection for such a course, if bank guarantee is granted from a Nationalised Bank to the satisfaction of the competent authorities. The claim further made that the direction for payment of interest when the appeals have been admitted and are pending in this Court, seems to be also reasonable and tenable and that till the appeals finally disposed of, no such direction for payment of any interest at any rate is to be granted.

4. Keeping in view all these aspects, in modification of the order of the Tribunal below, we direct the refund of Rupees One Crore paid by the manufacturer-assesses as pre-deposit, subject to the condition that the assessee shall furnish a bank guarantee for the said sum from a nationalised bank and keep it alive and in full force till the main appeals in this Court themselves are finally disposed of, to ultimately abide by the result of the appeals. It is made clear that the sum to be so refunded will be only Rupees One Crore and not any interest thereon, as directed by the Tribunal.

5. LA. Nos. 7 to 9 are disposed of on the above terms.