**(2000) 07 AHC CK 0143**

**In the Allahabad High Court**

**Case No :** Civil Misc. W.P. No. 479 of 1996

Trans Asia Carpets Limited APPELLANT

Vs

Assistant Commissioner RESPONDENT

**Date of Decision :** 06-07-2000

**Acts Referred:**

**Citation :** (2000) 71 ECC 490 : (2000) ECR 453

**Hon'ble Judges :** M. Katju, J;A.K. Yog, J

**Bench :** Division Bench

**Final Decision :** Allowed

## Judgement

1. Heard counsels for the parties.

2. It appears that an order dated 8th March 1991 was passed against the Petitioner by the Assistant Commissioner, Central Excise Division III, Ghaziabad vide Annexure-3 to the Writ Petition. In pursuance of that order the Petitioner made deposit under protest. Thereafter the Petitioner filed an appeal, which was allowed by the Commissioner (Appeals) on 30th June 1992 vide Annexure-4 to the Writ Petition. Against the order of the Commissioner (Appeals) the Department has filed a second appeal before the CEGAT. However, it is alleged in para 15 of the Petition that no stay order has been passed by the CEGAT. The Petitioner has stated in Para 13 of the Petition that he made a prayer for refund. This fact is not disputed in para 14 of the Counter-Affidavit.

3. It is settled law that mere filing of an appeal does not amount to stay of proceeding vide Super Electronics Vs. Assistant Collector of C. Ex., and Union of India and others Vs. Kamlakshi Finance Corporation Ltd., , [Para 6]. Hence, unless there is a stay order obtained by the Department, it has to comply with the order of the Commissioner (Appeals) dated 30th June 1992.

4. Hence, on the fact and circumstances of the case, we direct that unless there is a stay order of the CEGAT, the Department shall refund the amount deposited by the Petitioner in pursuance of the order dated 8th March 1991 within three

months of production of a certified copy of this order before the authority, along with 12% interest from the date of deposit to the date of refund.

5. Writ Petition is allowed.

 