

Voluntary deposit made during investigation and appropriated against the demand cannot be treated as pre-deposit and thus cannot be refunded

The Hon'ble Customs, Excise & Service Tax Appellate Tribunal, New Delhi ("**the CESTAT**") in the matter of *Sky Airways v. Commissioner of Customs (Appeals), New Delhi [Final Order No. 50715 of 2022 dated August 12, 2022]* dismissed the appeal stating that the amount deposited voluntarily during the investigation cannot not be treated as an amount towards the pre-deposit and refunded as the same was appropriated against the demand.

Facts:

Sky airways ("**the Appellant**") voluntarily deposited Rs. 3,00,82,889/- during investigation however, a show cause notice dated August 03, 2009 ("**the SCN**") was issued to the Appellant to show cause as to why Rs. 3,00,82,889/- should not be demanded.

The SCN was adjudicated, and order dated May 19, 2010 was passed confirming the demand and appropriating Rs. 3,00,82,889/- against the demand. The Appellant being aggrieved filed an appeal before the Hon'ble CESTAT and the demand was set aside and the matter was remanded back to the adjudicating authority to pass a fresh order in the light of the directions issued by the Hon'ble CESTAT with a direction to the parties to maintain the status quo.

Subsequently, the Appellant filed a refund claim on October 16, 2017 for refund of Rs. 3,00,82,889/- which was rejected by the Assistant Commissioner vide the order-in-original dated March 19, 2018 ("**the OIO**") and upheld by the Commissioner of Customs (Appeals) ("**the Respondent**") vide order-in-appeal dated June 17, 2019 ("**the OIA**"). Being aggrieved present appeal has been preferred by the Appellant.

The Appellant contended that the voluntarily deposit of Rs. 3,00,82,889/- made during the investigation, should be treated as a pre-deposit amount and should be refunded as the appeal filed by the Appellant was allowed by the Hon'ble CESTAT.

Issue:

Whether or not the claim of refund will be sustainable merely on the ground that it was pre-deposit deposited during the investigation stage?

Held:

The Hon'ble CESTAT in ***Final Order No. 50715 of 2022 dated August 12, 2022***, held as under:

- Noted that, the Appellant had not deposited the amount towards the pre-deposit and in any view of the matter, the Hon'ble CESTAT had even after setting aside the order dated May 19, 2010 appealed against, remanded the matter for a fresh adjudication with a direction to the parties to maintain the status quo.
- Thus, held that the Appellant was bound by this order of the Hon'ble CESTAT of status quo and could not have asked for the refund of the amount deposited voluntarily during investigation, which amount had been confirmed and appropriated against the demand vide order dated May 19, 2010.

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