

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

E/Stay/1840/00-NB(SM) Northern BENCH (SM)

Appeal No. E/3284/2000-NB

Dated : 16.1.2001.

CEGAT
NEW DELHI
To,

M/s. Cebon India Ltd.,

Plot No. 2, HSIDC Inl. Estate,

Gurgaon, Haryana.

In the matter of :

M/s. Cebon India Ltd.,

Appellant

vs.

C.C.E. New Delhi

Respondent

I am directed to transmit herewith a certified copy of Final Order No. Stay Order No. S/30/01-NB(SM)

Dated :8.1.2001.....passed by the Tribunal under Section 35-C(1) of Central Excise & Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962. A/62/2001-NB(SM)

Copy to :

Asstt. Registrar
NB(SM)

1. C.C.E. New Delhi
2. ~~GCE/OC~~ / (Appeal) New Delhi
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult. Shri. P.K. Mittal, Adv.,
171- Chitra Vihar Delhi-110091.
5. S.D.R
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
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Asstt. Registrar

**In the Custom, Excise & Gold (Control) Appellate Tribunal
New Delhi**

F/S/1840/NB(SM) in
APPEAL NO. E/3284/00-NP(SM) OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.
703-CE/DLH/2000 DATED 7/10.8.2000

PASSED BY Commissioner of Central Excise (Appeals)
New Delhi

8.1.2001
Date of decision.....

M/s Cebon India Ltd. APPELLANT (S)

Represented by Sh./Smt. P.K. Mittal, Advocate

VERSUS

CCE, New Delhi RESPONDENT (S)

Represented by Sh./Smt. S.C. Pushkarna, JDR

CORAM :

SHRI P.G. CHACKO, MEMBER (JUDICIAL)

To be referred to the Reporter or not?
FINAL ORDER NO. A/62/01/NB(C/M)
Per P.G. Chacko : STAY ORDER DND 5/30/01/NB(C/M)

The present application is for waiver of pre-deposit of an amount of penalty of Rs.2 lakhs and for stay of ^{of 2} recovery thereof, pending the appeal. On careful examination of the records of this case

and on hearing both sides, I am of the view that the appeal itself requires to be finally disposed of at this stage and, therefore, I am allowing this application unconditionally. I take up the appeal for disposal.

2. The appellants are manufacturers of pharmaceutical products. They are a 100% EOU. Certain raw materials, which were allegedly found to be contaminated and unfit for use in the manufacture of their final products were being transported by the appellants for the purpose of destruction at some other site. While in such transit, the goods were intercepted by the local Sales Tax officials of Haryana State and follow-up action was taken by them under the Sales Tax law. Those proceedings ended up in favour of the party. That was in 1995. Meanwhile, however, acting on information furnished by the Sales Tax authorities, the Central Excise authorities had issued a show-cause notice to the appellants after investigating the case as a case of clandestine removal. The show-cause notice proposed to recover duty on the above raw materials from the appellants as EOU and, further, proposed to impose penalty on them on the charge of clandestine removal. The appellants contested the notice. The jurisdictional Deputy Commissioner, who adjudicated the dispute, confirmed the demands of Rs.2,43,101.25 and Rs.3,88,383/- on two different lots of raw materials which were removed by them from their factory for destruction as aforesaid. The adjudicating authority also imposed a penalty of Rs.2 lakhs on the appellants. As regards the duty

amount of Rs.2,43,101.25, the authority, in its order, noted that the same had already been paid by the party. The appellants preferred appeal against the Deputy Commissioner's order to the Commissioner (Appeals) and also filed therein an application for waiver of pre-deposit of the outstanding amounts. Subsequently, however, the appellants on ^{their} ~~there~~ own deposited the remaining duty amount of Rs.3,88,383/- also during the pendency of the appeal. The appeal was ultimately disposed of by the Commissioner (Appeals) as per Order dated 7.8.2000 on the technical ground of non-deposit of adjudged dues. This order is under challenge in the present appeal filed by the party.

3. I have heard both sides. Ld. Advocate, Sh. P.K. Mittal submits that the lower appellate authority rejected the appellant's appeal on the alleged ground that the adjudged dues had not been deposited by them. This ground was totally baseless inasmuch as the entire outstanding amount of duty [Rs.3,88,383/-] had been deposited by the appellants during the pendency of the appeal. Ld. Counsel submits that the Commissioner (Appeals) had not given any opportunity of hearing to the appellants on the stay application filed by them and, thereby, it so happened that she did not take note of the deposit of the duty amount made by the appellants. Ld. Counsel submits that the impugned order has resulted from gross non-application of mind on the part of the lower appellate authority. The said

authority even did not care to give any personal hearing in the appeal on merits. He, therefore, prays for setting aside the impugned order and remanding the matter to the lower appellate authority. I have also heard Ld. DR, who has reiterated the findings of the adjudicating authority and has prayed for rejecting the appeal on that basis.

4. I have carefully examined the rival submissions. I find that, out of the total amount of duty confirmed by the adjudicating authority, deposit of an amount of Rs.2,43,101.25 had already been made by the party and the same was taken note of by the adjudicating authority in its order. It appears that even this aspect was overlooked by Ld. Commissioner (Appeals), who, in her order, stated that the appellants had not deposited the entire amount of duty dues adjudged. It is further found that the remaining amount of Rs.3,88,383/- was also paid towards duty by the appellants during the pendency of the appeal before the Commissioner (Appeals). When such deposit was made, the appellants' application for waiver of pre-deposit of the said amount was pending before the lower appellate authority. That authority did not care to afford any personal hearing on such application and, therefore, the party had no occasion to apprise the authority of the factum of the said amount having already been deposited. The proof of deposit of the

said amount of Rs. 3,88,383/- has been brought on record by the appellants in the present appeal. The lower appellate authority factually erred when she stated that the duty amount had not been deposited by the appellants. In fact, the entire amount had been deposited by them by the time the appeal was taken up by Ld. Commissioner (Appeals) for final disposal. If Ld. Commissioner (Appeals) had at least given an opportunity of hearing to the appellants before such final disposal of the appeal, it would have been possible for the party to inform her of the deposit of the entire amount of duty. This did not happen, patently, on account of non-observance of principles of natural justice on the part of the lower appellate authority. The impugned order, therefore, cannot be sustained.

5. For the aforesaid reasons, I set aside the impugned order and allow this appeal by way of remand, directing the Commissioner (Appeals) to take note of the deposit of the entire amount of duty and hear the appeal on its merits and pass a speaking order therein, after affording reasonable opportunity of personal hearing to the appellants.

(P.G. CHACKO)
MEMBER (JUDICIAL)