

GRAM : CEGCANAL

REGISTERED/A.D

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

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

Appeal No. E/1508/00-NB(EM) BENCH ND(EM)

Dated : 17-1-2001

CEGAT  
NEW DELHI  
To,

M/s M.M. Dying & Finishing Mills (P) Ltd.,  
Jassian Road, Ludhiana  
(Punjab)

In the matter of :

M/s M.M. Dying & Finishing Mills (P) Ltd., Appellant  
vs.  
CCE Chandigarh Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/70/2001/NB(EM)  
Dated : 4-1-2001 passed by the Tribunal under Section 35-C(1) of Central Excise  
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

1. CCE Chandigarh
2. CCE / CCT (Appeal) Chandigarh
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult. Shri Jagmohan Bansal, Adv.,  
# 3503, sector-38-D
5. S.D.R Chandigarh
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
14. Office Copy
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Asstt. Registrar  
NB(EM)

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Asstt. Registrar

CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL

NEW DELHI

Appeal No. E/1508/2000-NB(S)

[Arising out of order in original C.No. IV(16)43/TECH/99/12924 dated 30.12.99 passed by the Commissioner of Central Excise, Chandigarh]

M/s. M.M. Deying & Finishing Mills (P) Ltd. Appellants  
(Rep. by: Shri Jagmohan Bansal, Advocate)

vs.

CCE Chandigarh Respondent  
(Rep. by: Shri S. C. Pushkaran, JDR)

FINAL ORDER NO. 7-D/2001-NB(S) Dated 4.1.2001

PER P.S. BAJAJ

This appeal has been filed by the appellants against the order dated 10.8.99 passed by the Commissioner allowing abatement of duty not from 13.1.99 to 21.5.99, as claimed by them but from 18.1.99 to 21.5.99 under Rule 96-2Q(7) of the Central Excise Rules.

2. The appellants are engaged in the manufacture of manmade and cotton knitted fabrics falling under Tariff Heading 60 of the CETA. Before 13.1.98 they were working under Self Removal Procedure and paying duty ad valorem on the basis of clearances. However, on 10.12.98 Government issued Notification No.36/98-CE read with Notification No.41/98-CE(NT) under sub-section (1) of Section 3A of the Central Excises Act, 1944, whereby the said Ad valorem system, was converted into Compound Levy Scheme. That notification was also made applicable to all manufacturers who were engaged in the manufacture of processed textile fabrics. Under the Compound Levy Scheme the assesseees were

required to pay monthly lump sum in place of day to day payment on the basis of clearances . The monthly instalment was to be assessed on the basis of Annual Capacity of production of each factory which was to be determined in accordance with Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998. The appellants stopped operation of stenter w.e.f. 31.12.98 under intimation to the Assistant Commissioner, Division I, Ludhiana on 28.12.98. On 8.1.99 the jurisdictional Superintendent confirmed the closure of the stenter in RG.I. The appellants even decided to close their production unit under the seal of the central Excise Department w.e.f 15.1.99 and intimation to that effect was given to the concerned officer. They accordingly applied for abatement of duty from 13.1.99 to 21.5.99. The Commissioner through the impugned order had, however, allowed the abatement to them only from 18.1.99 and not 13.1.99, on the ground that three days prior intimation regarding the closure of the unit and sealing of stenter was not given and that the stenter was closed only on 15.1.99 and not 13.1.99.

3. The appellants have come up in appeal before the Tribunal against the said order of the Commissioner.

4. The learned counsel for the appellants has contended that no personal hearing was not afforded by the Commissioner before passing the impugned order and the documents furnished by the appellants regarding the closure of their stenter w.e.f. 31.12.98 and of the unit ultimately

on 15.1.99 had not been considered before passing the impugned order. The counsel has also contended that even request for condonation of the alleged delay in giving intimation regarding the closure of the stenter and the unit had not been considered by the Commissioner before passing the impugned order. He has prayed for remand of the case to the Commissioner for fresh decision after hearing the appellants.

5. The learned JDR has not contested this contention of the counsel. He has fairly conceded that personal hearing was not afforded to the appellants for substantiating their plea regarding closure of the stenter by them from 13.1.99. He has got no objection if the matter is sent back for fresh decision after hearing the appellants, especially when no final order has been also so far passed by the Commissioner as the impugned order passed by him was provisional.

6. I have heard both the sides and gone through the record.

7. The bare perusal of the impugned order of the Commissioner shows that he did not afford any personal hearing to the appellants before rejecting their claim for abatement of duty from 13.1.99 when they allegedly closed the stenter with prior intimation to the concerned officer. He has simply after going through the report of the Assistant Commissioner, Division I passed the impugned order allowing

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abatement of duty from 18.1.99 whereas the stand taken by the appellants that they in fact closed the stenter initially on 31.12.98 under intimation to the Assistant Commissioner on 28.12.98 and that the unit was ultimately closed by them on 15.1.99. These facts have not been considered by the Commissioner before passing the impugned order. He has also not considered the request for condonation of the delay, if any, in sending the intimation about the closure of the stenter by the appellants. The impugned order thus has apparently been passed in violation of the principles of natural justice and as such deserves to be set aside on this ground alone.

8. Moreover, the impugned order passed by the Commissioner was only provisional as clarified by him vide corrigendum dated 13.9.99 and the final order was to be issued in due course. But so far as even disputed by the learned JDR, no final order has been passed, although more than one year had passed.

9. In view of the discussion made above, the impugned order of the Commissioner is set aside and the matter is sent to the Commissioner for fresh decision in accordance with law after hearing the appellants.

10. The appeal of the appellants is thus allowed by way of remand.

Dictated and pronounced in the open Court.

(P.S. BAJAJ)  
MEMBER JUDICIAL