

GRAM : CEGCANAL

REGISTERED/A.D

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

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

BENCH

Appeal No. E/S/1921/2000 NB (SM)
E/3404/2000 NB (SM)

Dated : 29/1/2001

CEGAT
NEW DELHI

To,

MR. Nachiketa Tubes & Strips
Saidpura Dera Bassai
Patiala (PB)

In the matter of :

MR. Nachiketa Tubes & Strips Appellant

vs.

CCE Chandigarh. Respondent

stay order No. S/48/01/NB (SM)

I am directed to transmit herewith a certified copy of Final Order No. A/133/01/NB (SM)
Dated : 17/1/2001 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 :

Asstt. Registrar
NB (SM)

1. CCE Chandigarh
2. CCE/CEA (Appeal) Chandigarh
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult. Sh. Shivdas Adv.
B-4/158 Safdarjany Enclave
(Besment) New Delhi - 29
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, Bhisim Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
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Asstt. Registrar

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

E/S/1921/2000-NB(SM) in
APPEAL NO. E/3404/2000 OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

1355 & 1356/CE/CHD/2000 DATED 31.8.2000

PASSED BY Commissioner of Central Excise (Appeals)

Chandigarh

Date of decision 17.1.2001

Nachiketa Tubes & Strips (P) Ltd. APPELLANT (S)

Represented by Sh./Smt xxx Shivdas, Adv.

VERSUS

CCE, Chandigarh RESPONDENT (S)

Represented by Sh./Smt xxx S.C. Pushkarne, JDR

CORAM :

SHRI P.G. CHACKO, MEMBER (JUDICIAL)

To be referred to the Reporter or not ?

FINAL ORDER NO. A/123/01/NB (S/M)

STAX ORDER NO S/48/01/NB (S/M)

Per P.G. Chacko

On careful examination of the records and on hearing both sides, I find that this is a fit case for remand to the lower authority. I, therefore, allow the present application unconditionally, ~~and~~

and proceed to dispose of the appeal itself finally.

2. The appellants had taken deemed modvat credit to the extent (permitted by Central Govt. under Notification No. 58/97-CE dated 30.8.97 as amended) of 12% of the value of the goods (inputs) as declared in their invoice by the manufacturers thereof (who were paying duty on the basis of annual capacity of production under Section 3A of the Central Excise Act and Rule 96ZP of the Central Excise Rules). The credit so taken was disallowed by the Assistant Commissioner to the extent of Rs.3,46,510/- and a penalty of equal amount was imposed on the party as per his Order of adjudication. The aggrieved party appealed to the Commissioner (Appeals) and also filed with him an application for waiver of pre-deposit of the duty and penalty amounts and for stay of recovery thereof, pending the appeal. The lower appellate authority, without granting any opportunity of hearing to the party in the application, passed an order directing them to deposit an amount of Rs.2 lakhs under Section 35F of the Central Excise Act. This Interim Order, it appears, was not received by the party. Therefore, there was no compliance with the direction for deposit. Subsequently, the Commissioner (Appeals) proceeded to dispose of the appeal itself, without affording any opportunity of personal hearing to the appellants. This resulted in the impugned

order, whereby the appeal filed by the appellants stood rejected on the sole ground of non-compliance with the provisions of Section 35F.

3. I have heard both sides.

4. Ld. Advocate Sh. Shivdas submits that the impugned order was passed in violation of the principles of natural justice. He further submits that the non-deposit of the amount of Rs.2 lakhs was due to the fact that the Interim Order of the Commissioner (Appeals) was not received by the party. If atleast an opportunity of personal hearing in the appeal had been granted by ld. Commissioner (Appeals), it would have been possible for the appellants to inform the authority regarding non-receipt of the Interim Order and also to present their case on merits. Since any such opportunity was not given, the party was put to injustice of a grave nature. He prays for a remand of the matter after setting aside the impugned order. Ld. JDR Sh. S.C. Pushkarna concedes that no opportunity of personal hearing was given to the appellants by the Commissioner (Appeals) before passing the impugned order.

5. On a careful consideration of the above submissions coupled with the records available, I am satisfied that both the Interim Order directing

deposit of Rs.2 lakhs under Section 35F of the Act and the Final Order rejecting the appeal for non-compliance with the said Section 35F were passed in violation of natural justice. I set aside both the orders and allow this appeal by way of remand. The Commissioner (Appeals) shall dispose of the appellant's stay application, in the first instance, on its merits after affording a reasonable opportunity of personal hearing to them. He shall then dispose of the appeal on its merits after affording a similar opportunity to the party. The orders on the stay application and the appeal shall be speaking orders.

(P.G. CHACKO)
MEMBER (JUDICIAL)

RM