

GRAM : CEGCANAL

REGISTERED/A.D

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

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

E/S/1934/00-NB(SM)

BENCH NB(SM)

Appeal No. E/3425/00-NB(SM)

Dated : 9/2/01

CEGAT

NEW DELHI -

To,

M/s Simplex Industries Ltd.

Ahata Bilod

Distt - Dhar (M.P)

In the matter of :

M/s Simplex Industries Ltd. Appellant

vs.

CCE Indore Respondent

Stay order NO. S/87/01/NB(SM)

I am directed to transmit herewith a certified copy of Final Order No. A/208/01-NB(SM)

Dated :2.2.2001.....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 Indore

2. CCE/EE/ (Appeal) Bhopal
3. Chief Commissioner of Central Excise / Customs. Jaipur
4. Adv. / Consult.

— None —

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
14. Office Copy
15. M/s Census Publication.

Asstt. Registrar

CUSTOMS, EXCISE & GOLD(CONTROL) APPELLATE TRIBUNAL,
NEW DELHI.

E/S/1934/00-NB(S) WITH E/A.NO. 3425/00-NB(S)

(Arising out of Order-in-appeal No. 875-CE/BPL/2000 dated 03.08.2000 passed by the Commissioner of Central Excise (Appeals), Bhopal).

M/s. Simplex Industries Ltd.

Appellant
(None)

vs

C.C.E., Indore.

Respondent
(Sh. H.R. Bheema Shankar, SDR)

FINAL ORDER NO. A/208/01/NB
(Dated the 2nd Feb., 2001) (CS/m)

PER S.S. KANG :

STAY ORDER NO S/87/01/NB (S/W)

When the case was called, none appeared on behalf of the applicant, in spite of notice. Therefore, the stay application, filed by the applicants, is being taken up in the absence of applicants.

The applicant filed this stay application for waiver of pre-deposit of duty and penalty.

Heard ld. S.D.R. and perused the appeal papers.

The contention of the applicant is that against the adjudication order, the applicant filed an appeal alongwith the application for waiver of pre-deposit of duty and penalty and the Commissioner (Appeals), without affording an opportunity of personal hearing, directed the applicant, to deposit the duty and penalty for hearing of the appeal and thereafter, without issuing notice, the appeal filed by the

appellant, was dismissed for non-compliance to the provisions of Sec. 35F of the Act.

In this situation, the contention of the applicants, in their appeal memo, is that the interim order as well as the impugned order, is passed in violation to the principles of natural justice.

The Tribunal in the case of Suraksha Flexo Packs vs C.C.E. reported in 2000 (122) E.L.T. 232, in a similar situation, remanded the matter to the Commissioner (Appeals) for deciding afresh after affording an opportunity of personal hearing to the appellant. In view of the above decision of the Tribunal, the pre-deposit of duty and penalty is waived for hearing of the appeal and the appeal is being taken up for disposal. As the interim order as well as the impugned order is passed in violation to the principles of natural justice, the orders are set aside and the matter is remanded to the Commissioner (Appeals). Commissioner (Appeals) will decide the application for waiver of pre-deposit of duty and penalty afresh after affording an opportunity of personal hearing to the appellants and, thereafter, to proceed in accordance with law. the appeal is disposed of by way of remand. (Dictated in Court).

(S.S. KANG)
MEMBER (JUDICIAL)

Dt. 2nd Feb., 2001
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