

GRAM : CEGCANAL

REGISTERED/A.D

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

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

BENCH - NB(SM)

Appeal No. E/S/1273/02/NB(SM) in

Dated : 15/2/2001.

CEGAT  
NEW DELHI

To,

M/S M P tobacco Ltd  
Phulgaon, Dotia Road  
Durg (MP)

In the matter of :

M/S M.P. tobacco Ltd

Appellant

vs.

CCE Raipur

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/200/01/NB(S)/102/01

NB(SM) Dated : 9/2/2001.....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 :

H  
Asstt. Registrar  
NB(SM)

1. CCE Raipur
2. CCE / EE / (Appeal) Bhopal
3. Chief Commissioner of Central Excise / Customs.
4. Adv. / Consult. Ms. Sujata Shirodkar, Adv  
171-H, Mayapuri Vihar 2  
above Delhi - 9,
5. S.D.R - NB(SM)
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
13. M/s Lex Site Com. Ltd., Mumbai
14. Office Copy
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H  
Asstt. Registrar NB(SM)

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

E/S/1273/00-NB(S) WITH E/A.NO. 2340/00-NB(S)

(Arising out of Order-in-Appeal No. 534-  
CE/APPEAL/Bhopal/2000 dated 29.3.2000 passed by the  
Commissioner of Central Excise (Appeals), Bhopal).

M/s. M.P. Tobacco Ltd. Appellant  
(Ms. Sujata Shircdkar, Advocate)

vs

C.C.E., Raipur. Respondent  
(Sh. H.R. Bheema Shankar, SDR)

FINAL ORDER NO. A/260/01/ORB (C/P/M)  
(Dated the 9th Feb., 2001)  
STAY ORDER NO S/102/01/NBCE/PD

PER S.S. KANG :

The applicants filed this application for  
waiver of pre-deposit of penalty.

The contention of the applicants is that the  
Commissioner (Appeals) directed the applicants to  
deposit the penalty<sup>amount</sup> for hearing of the appeal without  
granting them an opportunity of personal hearing and,  
thereafter, the appeal was dismissed for non-compliance  
to the provisions of Sec. 35 F of the Act. The  
contention of the applicants is that the plea of  
financial hardship raised in the application for waiver  
of pre-deposit of penalty is not considered by the  
Commissioner while passing the interim order.

The appellants filed an appeal against  
adjudication order alongwith an application for waiver  
of pre-deposit of penalty and in the application the  
applicants specifically pleaded the financial hardship.  
Without considering this plea of the appellants, the  
Commissioner (Appeals), without granting an opportunity  
of personal hearing, decided the application for waiver  
of pre-deposit and, thereafter, without issuing any  
notice, the appeal was dismissed for non-compliance to  
the provisions of Sec. 35 F of the Act, hence the  
impugned order is passed in violation to the principles

of natural justice. Therefore, the pre-deposit of penalty is waived for hearing of the appeal.

With the consent of both the parties, the appeal is being taken up for hearing.

As discussed above, the impugned order is passed in violation to the principles of natural justice, hence is set aside and the matter is remanded to the Commissioner (Appeals) for deciding the application for waiver of pre-deposit 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. 09.02.2001  
vk