

GRAM : CEGCANAL

REGISTERED/A.D

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

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

E/S | 2081 | TO - NB (SM)
Appeal No. E/ 3600 | TO - NB (SM)

BENCH NB (SM)

Dated : 12/3/2001

CEGAT
NEW DELHI
To,

M/S Sikri Steel (P) Ltd.,
Phase - VIII, Focal Point,
Ludhiana (PB)

In the matter of :

M/S Sikri Steel (P) Ltd., Appellant
vs.
CCE Chandigarh Respondent

Stay order No. S/ 122/2001 - NB (SM)

I am directed to transmit herewith a certified copy of Final Order No. A/ 342/2001 - NB (SM)
Dated : 2-3-2001 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 / CE / (Appeal) Chandigarh
3. Chief Commissioner of Central Excise / Customs, New Delhi
4. Adv. / Consult. Shri K. K. Anand, Adv.
A-5, Basement, Lajpat Nagar - III,
New Delhi - 24
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 Cen-cus Publication.
16. M/s Law Infotech Resources (P) Ltd.,

Asstt. Registrar

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

E/Stay/2081/00-NB(S) in
APPEAL NO. E/3600/00-NB OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL APPEAL NO.

1392/CE/CHD/2K DATED 14.9.2000

PASSED BY Commissioner, Customs & Central Excise
(Appeals), CHANDIGARH

Date of decision 2.3.2001

M/s Sikri Steels (P) Ltd. APPELLANT (S)

Represented by Sh./Smt. xxx K.K. Anand, Advocate

VERSUS

CCE, Chandigarh RESPONDENT (S)

Represented by Sh./Smt. xxx Swatantra Kumar

CORAM:

SHRI P.G. CHACKO, MEMBER (JUDICIAL)

To be referred to the Reporter or not ?

FINAL ORDER NO. A/342/01/NB

Per P.G. Chacko :

STAY ORDER NOS/122/01/NB (S/m)
C/m

This application is for waiver of pre-deposit of penalty. The penalty was imposed by the adjudicating authority and affirmed by the lower appellate authority consists of two elements,

namely, penalty under Section 11AC of the Central Excise Act equal to the duty amount of Rs.1,88,997/- and penalty under Rule 173Q of the Central Excise Rules amounting to Rs.25,000/-.

2. On a careful examination of the records and on hearing both sides, I find that this is a fit case for final disposal at this stage itself, having regard to the particular fact that the impugned order is not an order on the merits of the dispute.

3. The adjudicating authority had disallowed modvat credit to the extent of Rs.1,88,997/- on certain grounds and imposed penalties as above on the party. The aggrieved assessee went in appeal to the Commissioner (Appeals). They also filed an application therein praying for waiver of pre-deposit of the penalty amounts, ^{the duty 3} having already been paid by way of debit in RG 23A part-II. The lower appellate authority considered the stay application, heard the applicants and passed ~~the~~ ^{dated 2} order ~~on~~ 23.5.2000 directing them to deposit an amount of Rs.2 lakhs within a period of 15 days for purposes of Section 35F of the Central Excise Act. The party did not comply with the direction. Later on, ld. Commissioner (Appeals) rejected the assessee's appeal on account of non-compliance with the provisions of Section 35F ~~ibid~~ as per order

dated 14.9.2000. That order was passed without affording any personal hearing to the appellants. Therefore, in the present appeal before the Tribunal, the appellants are mainly aggrieved by negation of natural justice.

4. I have heard ld. Advocate Sh. K.K. Anand for the appellants and ld. JDR Sh. Swatantra Kumar for the Revenue.

5. Ld. Counsel submits that the penalty of Rs.1,88,997/- imposed on the assessee under Section 11AC of the Act is not sustainable in law inasmuch as the provisions of the said section are not applicable to demands of duty under modvat rules. As regards the penalty imposed on 1730 of the Central Excise Rules, he has no case that the provisions of the said rule are not applicable to demands under modvat rules. ~~I have impressed prima facie~~ As regards the argument with reference to Section 11AC of the Act, the appellants appear to have a strong prima facie case, though in relation to the other submissions, I do not find any such case. I, therefore, hold the view that the requirement of pre-deposit under Section 35F in respect of the entire amount of penalty imposed under Section 11AC has to be waived completely and the like requirements in respect of the penalty

needs to be fulfilled

imposed under Rule 1730[^] for the purpose of hearing ~~in~~ their appeal on merits before ^{the} lower appellate authority.

6. In view of the above findings, I set aside the impugned order and allow this appeal by way of remand, directing ld. Commissioner (Appeals) to pass a speaking order on the merits of the dispute after affording a reasonable opportunity of personal hearing to the appellants, subject to condition that ^{an} amount of Rs.25,000/- ^{be} ~~is~~ deposited by the appellants to meet the requirements of Section 35F within a period of six weeks from today. It is made clear that there shall be no requirement for pre-deposit in respect of the amount of penalty imposed under Section 11AC. ^a And that any departmental proceedings for recovery of such amount will stand stayed during the pendency of the appeal before the lower appellate authority. ~~The stay application is allowed in the above terms by way of remand.~~

(P.G. CHACKO)
MEMBER (JUDICIAL)

RM