

GRAM : CEGCANAL

REGISTERED/A.D

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

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

E/S/1829/2000-NB(SM)

BENCH NB (SM)

Appeal No. E/S/254/2000 "

Dated : 21/3/2001.

CEGAT
NEW DELHI
To,

M/s Bhawami Shankar Castings Ltd,

Vz Po Raowali, Pathankot Road,

Jalandhar (P.B.)

In the matter of :

M/s Bhawami Shankar Castings Ltd,

Appellant

vs.

CCE - Chandigarh.

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/298/2001-NB(SM)
Dated :16/3/2001..... 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/CEA(Appeal) Chandigarh.
3. Chief Commissioner of Central Excise / Customs - New Delhi,
4. Adv. / Consult. Shri. Suresh Malhotra Adv.
13-R. Hukam Chand Colony,
Near Day College Jalandhar (P.B.)
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
- ~~13. M/s Lex Site Com. Ltd., Mumbai~~
14. Office Copy
15. M/s Cen. Cus.
16. M/s Law Intech.

Asstt. Registrar

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

E/S/1829/2000/NB(SM) in
APPEAL NO.E./3254/2000.....OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL ^{XXXXXXXXXX}APPEAL NO.

1357/CE/CHD/2KDATED 31.08.2000

PASSED BY..... COMMISSIONER (APPEALS)
.....
..... CHANDIGARH.

Date of decision..... 16.03.2001.

..... M/s BHAWANI SHANKAR CASTINGS LTD. JALANDHAR - APPELANT (S)

..... Represented by Sh./Smt. SUDHIR MALHOTRA,
.....
..... ADVOCATE.

VERSUS

..... CCE, CHANDIGARH - RESPONDENT (S)

..... Represented by Sh./Smt. K. PANCHATCHARAN,
.....
..... JDR.

CORAM:
P.G.CHACKO, MEMBER (J).
.....
.....
.....

Per..... P.G.CHACKO: *FINAL* To be referred to the Reporter or not?
STAY ORDER NO A/398/01/NB(S/M)
ORDER NO S/150/01/NB(S/M)

This application is for waiver of pre-deposit of
duty amount of Rs.1,82,625/- and penalty amount of Rs.1
lakh and for stay of recovery thereof, pending the appeal
before the Tribunal.

2. I have carefully examined the records and heard both sides.

3. The adjudicating authority confirmed a demand of duty to the aforesaid extent against these applicants and imposed on them a penalty of Rs.1 lakh. Aggrieved by the order of adjudication, the applicants preferred appeal to the Commissioner (Appeals) and also filed a stay application like the present one seeking waiver of pre-deposit and stay of recovery. That stay application was disposed ^{of} by ld. Commissioner (Appeals) as per order dated 01.02.2000, whereby the party was directed to deposit an amount of R.2 lakhs within 15 days under Section 35F of the Central Excise Act. That order was received by the party on 03.02.2000. On 28.02.2000, i.e after expiration of the stipulated period of 15 days, the party submitted an application to the Commissioner (Appeals) praying for a modification of the order by taking into account their financial hardships. Subsequently, after more than 6 months, the Commissioner (Appeals) took up the appeal for final disposal and passed order dated 31.08.2000 rejecting the appeal for non-compliance with the provisions of Section 35F. The appeal before the Tribunal is against that order of the lower appellate authority.

4. Ld. Advocate Shri Sudhir Malhotra for the applicants has reiterated the grounds of the appeal as well as the stay application and has prayed for waiver of pre-deposit of the duty and penalty amounts on the ground of financial hardships. Ld. JDR Shri K.Panchatcharan has

opposed the prayer.

5. On a careful examination of the records and submissions, I find that, on the facts of the case, the applicants have no prima facie case which ~~can~~ calls for waiver of pre-deposit and stay of recovery as prayed for. With regard to the plea of financial hardships, I find that such a plea was not taken before the lower appellate authority by the party in their stay application. It is noted that, even in the subsequent application dated 28.02.2000 seeking modification of the stay order, the party did not furnish any proof of financial hardships, though they made an apparently feeble plea of such hardships in that letter. The present stay application is accompanied ^{by} copies of certain balance sheets. But, in the aforesaid circumstances, I find that the plea of financial hardships, sought to be supported by the accompanying documents, is only an after-thought, and hence it merits no consideration in the context of considering the present application for stay. However, it appears, the impugned order was passed by the lower appellate authority ^{w/out} ~~when~~ giving any opportunity of hearing to the party. The order is, therefore, violative of the principles of natural justice. It, therefore, requires to be set aside. The applicants have no case that the stay order was passed by the Commissioner (Appeals) without personally hearing them or ^{that} ~~with~~ the stay application before that authority was accompanied ^{by} any proof of financial hardships. I am, therefore, not inclined to interfere with the stay order passed by the ld. Commissioner (Appeals) directing the party to deposit an amount of Rs.2 lakhs for the purpose of hearing the appeal on merits.

6. Nevertheless, having regard to the plea of financial hardships now made before me, I would permit the party to comply with the requirement of Section 35F before the lower appellate authority by depositing an amount of Rs.1 lakh in cash and furnish Bank Guarantee covering the balance amount of Rs.1 lakh. The party will have time for doing so upto 16.05.2001. The stay order dated 01.02.2000 passed by the ld. Commissioner (Appeals) will stand modified to this effect. In the event of compliance with the directions contained in this order, the lower appellate authority will dispose of the appeal on its merits after affording a reasonable opportunity of personal hearing to the party.

7. The impugned order is set aside and the appeal is allowed by way of rem^and in the above terms. The present stay application also stands disposed of.

(Dictated and pronounced in open Court)

(P.G.CHACKO)
MEMBER (JUDICIAL)

16.03.01.

amk.