

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2094,3670,3737&3759/2010 - EX[DB] WITH
 Assistant Registrar E/S/2004,3475,3548&3579/2010-EX
 C.E.S.T.A.T, New Delhi

Date **24/03/2011**

To :
 M/S ACME GLOBAL
 40 B,SAROJINI NAGAR, LUCKNOW.
M/S ACME GLOBAL

Appellant

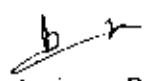
Vs

Respondent

C.C.E. LUCKNOW

STAY ORDER NO.354-357/2011-EX

I am directed to transmit herewith a certified copy of **Final order No.293-296/ 2011 EX[DB]** dated **15-3-11**
 passed by the Tribunal under **Section 35-C(1) of Central Excises Act, 1944**


 Assistant Registrar

(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. LUCKNOW

7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult

MR.R.S. SHARMA, ADV.,

C-9/9656, VASANT KUNJ, NEW DELHI 110070

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise, I.P. Estate, New Delhi

6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

7. Company Law Institute of India Pvt Ltd., No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,
 Ahmedabad-15

11. LAWCRUX Advisors Pvt Ltd, LAW House.1-8,Sector - 10, Faridabad 121003 (Harvana)

12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road,
 Vasant Kunj, New Delhi - 110070

13. Office Copy

14. Guard file

15. HON'BLE PRESIDENT.

16. *M/S. BIHARISI PACKAGING,*

B-14-15, SCOOTER ANCELLARY ESTATE,

NADARGANJ, LUCKNOW

17. *M/S. STAR STIZZAS,*

B-11/1, INDI-ARKA, AMAUSI, NADARGANJ, LUCKNOW



Assistant Registrar

(Excise Appeal Branch)

I
CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing: 21.12.2010

Date of decision: 21.12.2011

Excise Stay No. 2004 of 2010 in Excise Appeal No. 2094 of 2010

M/s Acme Global

Appellants

Vs.

CCE, Lucknow

Respondent

AND

Excise Stay No. 3475 of 2010 in Excise Appeal No. 3670 of 2010

M/s Bihariji Packaging

Appellants

Vs.

CCE, Lucknow

Respondent

AND

Excise Stay No. 3548 of 2010 in Excise Appeal No. 3737 of 2010

M/s Star Steels

Appellants

Vs.

CCE, Lucknow

Respondent

AND

Excise Stay No. 3579 of 2010 in Excise Appeal No. 3759 of 2010

M/s Star Steels

Appellants

Vs.

CCE, Lucknow

Respondent

Appearance:

Rep. by Sh. R.S. Sharma, Advocate for the appellants.

Rep. by Sh. Sunil Kumar, DR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

STAY ORAL ORDER NO. 354-357/2011-EX

Per: Shri Justice R.M.S. Khandeparkar:

Heard the learned Advocate for the appellants and DR for the respondent. Since we propose to dispose of the appeals themselves we allow the applications without insisting for deposit and direct the registry to place the appeals for hearing forthwith.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Pant

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing : 21.12.2010

Date of decision: 15.3.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President

Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	<i>Per</i>
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	<i>Per</i>
3.	Whether Their Lordships wish to see the fair copy of the Order?	<i>See</i>
4.	Whether Order is to be circulated to the Departmental authorities?	<i>f</i>

Excise Appeal No. 2094 of 2010

[Arising out of Order-in-Appeal No. 118-CE/LKO/2010 dated 29.06.2010 passed by the Commissioner (Appeals), Customs, Central Excise and Service tax, Lucknow].

M/s Acme Global

Appellants

Vs.

CCE, Lucknow

Respondent

AND

Excise Appeal No. 3670 of 2010

[Arising out of order-in-appeal No. 209-CE/LKO/2010 dated 17.08.2010 passed by the Commissioner (Appeals), Customs, Central Excise and Service tax, Lucknow].

M/s Bihariji Packaging

Appellants

Vs.

CCE, Lucknow

Respondent

AND

Excise Appeal No. 3737 of 2010

[Arising out of order-in-appeal No. 215-CE/LKO/2010 dated 25.08.2010 passed by the Commissioner (Appeals), Customs, Central Excise and Service tax, Lucknow].

M/s Star Steels

Appellants

Vs.

CCE, Lucknow

Respondent

AND

Excise Appeal No. 3759 of 2010

[Arising out of order-in-appeal No. 218-CE/LKO/2010 dated 25.08.2010 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Lucknow].

M/s Star Steels

Appellants

Vs.

CCE, Lucknow

Respondent

Appearance:

Rep. by Sh. R.S. Sharma, Advocate for the appellants.

Rep. by Sh. Sunil Kumar, DR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

FINAL Oral Order No. 293 - 296 / 2011-EX

Per: Shri Justice R.M.S. Khandeparkar:

These appeals have been heard pursuant to the order passed in Stay application Nos. 2004, 3475, 3548 & 3579 of 2010 respectively.

2. We have heard the learned Advocate for the appellants and learned SDR for the respondents.

3. In all these three appeals the common question of law is sought to be raised as to whether Section 35F of the Central Excise Act, 1944 excludes

personal hearing or it is necessary for the Commissioner (Appeals) to grant hearing to the appellants before disposal of the applications for dispensing with the requirement of pre-deposit and the failure in that regard would vitiate such order as well as subsequent order dismissing the appeal for non-compliance of requirement of pre-deposit.

4. As far as Excise Appeal No. 2094 is concerned facts thereof reveal that the appellants are engaged in manufacture of 'Ada' brand pan masala containing tobacco commonly known as gutka classifiable under Chapter sub-heading 24039990 of the first schedule to the Central Excise Tariff Act, 1985 and as they were found to have failed to comply with the requirement of provisions of excise law, a show cause notice dated 13.07.2009 came to be issued which was contested by the appellants by filing their reply dated 25.01.2010. The adjudicating authority, after hearing the party, confirmed the demand to the tune of Rs. 6,08,875/- alongwith interest and equal amount of penalty under its order dated 19.03.2010. Being aggrieved, the appellants filed the appeal before Commissioner (Appeals) and alongwith appeal, filed an application for dispensing with the requirement of pre-deposit which came to be disposed of by the Commissioner (Appeals) under order dated 08.06.2010 requiring the appellants to deposit 20% of the entire amount of duty confirmed and the penalty imposed by the adjudicating authority under his order dated 19.03.2010 within two weeks from the receipt of the copy of the said order. The appellants failed to deposit the amount within the specified period. However, they filed an application dated 22.06.2010 for modification of the order passed on 08.06.2010 on the ground of undue hardship. The appellants also submitted a bank statement

dated 22.06.2010. Though, the appellants were given opportunity of being heard in person on 29.06.2010, but none appeared before the Commissioner (Appeals) and accordingly the impugned order came to be passed.

5. In Excise Appeal No. 3670 of 2010 the appellants are engaged in manufacture of the goods classifiable under tariff heading 32.91 of the first schedule to the Central Excise Tariff Act, 1985. Having found to have committed certain violations in relation to the excise law, a show cause notice dated 30.01.2009 came to be issued to the appellants which was contested by them by filing their reply on 01.05.2009. Consequently the Assistant Commissioner, Lucknow by its order dated 29.01.2010 confirmed the demand to the tune of Rs. 486472/- while appropriating an amount of Rs. 486500/- already deposited by the party and also ordered payment of interest on the said amount of duty, besides imposing equal amount of penalty. Further, 27775.00 kgs. plastic granules valued at Rs. 26,94,175/- were ordered to be confiscated while giving option to redeem the same on payment of redemption fine of Rs. 675000/- and further, penalty of Rs. 388501/- was also imposed under Rule 15(1) of the Cenvat Credit Rules, 2004. Being aggrieved, the appellants filed appeal before the Commissioner (Appeals) alongwith application for dispensing with the requirement of pre-deposit. The said application was disposed of by an order dated 01.06.2010 directing deposit of the 50% of the entire amount of penalty within two weeks from the receipt of the copy of the said order. The party, however, did not deposit the amount but under its letter dated 14.06.2010 submitted that their financial conditions were very poor and they were facing acute financial hardship and, therefore, requested for modification of the said

order. The appellants were heard in person on 09.08.2010 when Shri G.K. Dhusia, Consultant appeared on behalf of the appellants. The Commissioner (Appeals) by the impugned order dated 17.08.2010 held that the appellants had failed to comply with the requirement of pre-deposit and in the absence of any cause being shown, the appeal was liable to be dismissed and was in fact accordingly dismissed.

6. In Excise Appeal No. 3737 of 2010, the appellants are engaged in manufacture and clearance of MS Bars, MS Flats, MS angels and MS Channels classifiable under Chapter 72 of the first schedule to the Central Excise Tariff Act, 1985. Having found to have committed certain violations of the provisions of excise law, a show cause notice came to be issued on 21.07.2008 which was contested by the appellants by filing their reply dated 10.09.2009. After taking into consideration rival contentions, the Deputy Commissioner, Lucknow by his order dated 30.11.2009 confirmed the demand to the tune of Rs.92,288/- while appropriating equal amount already deposited and also imposed penalty of equal amount. Being aggrieved, the appellants filed appeal before the Commissioner (Appeals) alongwith an application to dispense with the requirement of pre-deposit. The said application came to be disposed of by an order dated 25.05.2010 directing the appellants to deposit 50% of the entire amount of penalty within two weeks. The appellants did not deposit the same and instead filed a letter on 03.06.2010 stating that their conditions were pathetic and they were facing financial hardship and on that count requested for modification of the order dated 25.05.2010 and for waiver of the amount which was required to be deposited. The appellants were heard in person by the Commissioner

(Appeals) on 18.08.2010 as they were represented by Shri G.K. Dhusia, Consultant. By impugned order, considering the failure on the part of the appellants to deposit the amount and to show cause against dismissal the appeal, the appeal itself was dismissed.

7. In Excise Appeal No. 3759 of 2010, the appellants are engaged in manufacture of iron and steel rerolled products under Chapter 72 of the first schedule to the Central Excise Tariff Act, 1985. Having noticed to have committed some violation of provisions of excise law, a show cause notice dated 28.06.2008 came to be issued which was contested by the appellants under reply dated 13.05.2009. However, the Assistant Commissioner, Lucknow by his order dated 19.11.2009 confirmed the demand of duty to the tune of Rs. 2,51,104/- with interest and imposed equal amount of penalty. Being aggrieved, the appellants preferred appeal before the Commissioner (Appeals) alongwith the application for dispensing with the requirement of pre-deposit. The said application was disposed of by an order dated 24.05.2010 directing the appellants to deposit 50% of the entire amount of duty and penalty imposed under the adjudicating order dated 19.11.2009 within two weeks from the receipt of the copy of the order. The appellants did not comply with the said order but filed an application on 03.06.2010 for modification of the order dated 25.05.2010 while submitting that their financial position was pathetic and they were facing financial hardship. The appellants were heard in person through their representative Shri G.K. Dhusia on 18.08.2010. As there was default without any justification, the appeals came to be dismissed by the impugned order dated 25.08.2010.

8. The common grounds in all these appeals is that the Commissioner (Appeals) disposed of the applications for dispensing with the requirement of pre-deposit without affording opportunity of being heard in person and, therefore, the initial orders directing deposit of the amount confirmed by the adjudicating authority or any part thereof were bad in law and, therefore, were not enforceable. It is their further contention that the hearing granted post disposal of such applications cannot amount to granting hearing to the aggrieved party in relation to the requirement of pre-deposit and, therefore, would not be sufficient compliance of basic principle of natural justice. On the other hand, it is the case of the department that Section 35F does not specifically prescribe nor indirectly suggest requirement of personal hearing before passing an order on such application. In fact, the provision comprised under Section 35F merely deals with the requirement of deposit of the amount confirmed by the adjudicating authority to enable the appellants to be heard in appeal and in case of requirement of waiver of such deposit to satisfy the appellate authority in that regard. In the absence of statutory provision regarding the requirement of personal hearing under Section 35F, according to the department the order passed thereunder even without granting personal hearing cannot stand vitiated. Besides, the appellants were duly heard in relation to their request for modification and after considering that case in that regard, the appeals having been dismissed for non compliance of Section 35F orders, the same cannot be said have been vitiated.

9. On behalf of the appellants reliance is placed in the decision of the Madras High Court in the matter of **ITC Limited vs. CCE (A), Chennai**

reported in 2001 (127) ELT 338 (Mad.) of the Tribunal in the matter of **Bettonville Diamond Equipment (I) Pvt. Ltd. vs. CCE, Visakhapatnam** reported in 2001 (134) ELT 163 (Tri. Chennai) of the Madras High Court in the matter of **Indian Refrigerator Co. Ltd. vs. Union of India** reported in 2002 (141) ELT 632 (Mad.), of the Punjab & Haryana High Court in the matter of **Fashion Fair vs. Union of India** reported in 2009 (236) ELT 19 (P&H) and of the Tribunal in the matter of **Excel Enterprises vs. Commissioner of C. Ex. Chennai** reported in 2000 (126) ELT 674 (Tribunal). On the other hand, the department has relied upon the decision of the Apex Court in the matter of **Union of India vs. Jesus Sales Corporation** reported in 1996 (83) ELT 486 (S.C.), of the Delhi High Court in the matter of **Union of India vs. Anil Chanana** reported in 2007 (207) ELT 351 (Del.), a Board Circular No. 450/16/99-CX dated 30.03.1999.

10. Section 35F of the Central Excise Act, 1944 deals with the subject of deposit, pending the appeal. It provides that where in an appeal under Chapter VIA, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of central excise authorities or any penalty levied under the said Act and the person is desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied. The first proviso to Section 35F provides that where in a case the Appellate Authority is of the opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, such authority may dispense with such deposit subject to such conditions as

he may deem fit to impose so as to safeguard the interests of revenue. The second proviso provides that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing. The explanation to the said section clarifies that the expression "duty demanded" in the said section would include amount determined under section 11D, the amount of erroneous Cenvat Credit taken, amount payable under rule 57CC of the Central Excise Rules, 1944, the amount payable under rule 6 of the Cenvat credit Rules and interest payable under the provisions of the said Act or the rules made thereunder.

11. Perusal of the said provision of law therefore would certainly disclose that there is no specific provision for personal hearing being granted to the appellant before disposing the application filed by the appellants for dispensing with the requirement of deposit of the duty or penalty. Rather the provision of law comprised under Section 35F makes it mandatory for every appellants to deposit the amount demanded and confirmed by the adjudicating authority. Certainly, it also gives right to the appellants to file an application for dispensing such requirement of deposit of amount. However, if such application is filed, then discretion is given to the appellate authority to decide the same subject to condition that the appellate authority may impose appropriate conditions while dispensing wholly or partly the requirement of pre-deposit of the amount. In case of such an application before Commissioner (Appeals), it is necessary to dispose of the same within thirty days from the date of the filing of such application. Even

in relation to such order however, there is no specific provision for personal hearing to be granted to the appellants.

12. It is settled law that the rule of natural justice does not mean that the applicant is invariably required to be heard in person in each and every case, even though the statutory provision does not make such personal hearing to be mandatory. The expression 'hearing' need not necessarily mean 'personal hearing', and this is settled law by catena of decisions of the Supreme Court.

13. The Apex Court in **Jesus Sales Corporation** while dealing with the issue as to whether the appellate authority dealing with the matter under third proviso to sub-section (1) of Section 4M of the Imports & Exports (Control) Act, 1947 is required to give oral hearing to the aggrieved party, and the decision of the Delhi High Court in that regard in favour of such party, held that "the Courts cannot insist that under all circumstances and under different statutory provisions personal hearing have to be afforded to the persons concerned. If this principle affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and the applications are disposed of by the competent authorities who have been vested with the powers to dispose of the same. Such authority which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the

case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application only after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of the taxation and revenue matters. When an authority has determined a tax liability or has imposed a penalty, then the requirement that before the appeal is heard such tax or penalty should be deposited cannot be held to be unreasonable as already pointed out above.

In the case of **Shyam Kishore v. Municipal Corporation of Delhi** reported in (1993) 1 SCC 22 it has been held by this Court that such requirement cannot be held to be harsh or violative of Article 14 of the Constitution so as to declare the requirement of pre-deposit itself as unconstitutional. In this background, it can be said that normal rule is that before filing the appeal or before the amount which he has been directed to deposit as tax or penalty. The non deposit of such amount itself is an exception which has been incorporated in different statutes including the one with which we are concerned. Second proviso to sub-section (1) of Section 4-M says in clear

and unambiguous words that an appeal against an order imposing a penalty shall not be entertained unless the amount of penalty has been deposited by the appellants. Thereafter the third proviso vests a discretion in such Appellate authority to dispense with such deposit unconditionally or subject to such conditions as it may impose in discretion taking into consideration the undue hardship which it is likely to cause to the appellants. As such it can be said that the statutory requirement is that before an appeal is entertained, the amount of penalty has to be deposited by the appellant; an order dispensing with such deposit shall amount to an exception to the said requirement of deposit. In this background, it is difficult to hold that if the Appellate authority has rejected the prayer of the appellant to dispense with the deposit unconditionally or has dispensed with such deposit subject to some conditions without hearing the appellant, the appeal of the petition filed on behalf of the appellant for the said purpose, the order itself is vitiated and liable to be quashed being violative of principles of natural justice".

14. Applying the law laid down by the Apex Court in the above decision to the proceedings under Section 35F of the said Act, it can certainly be said that no appellants is entitled to be heard on merits in appeal unless he complies with his obligation regarding pre-deposit in terms of Section 35F of the said Act. The provision of law in that regard specifically provides that the appellants "shall" deposit the amount demanded under the adjudicating order. It includes the duty amount, the interest thereon and the penalty. It is only by way of proviso to the said provision of law, a discretion of power has been vested in the Appellate authority to dispense with the requirement

of such deposit subject to condition as it may impose bearing in mind the undue hardship which the assessee may suffer in case of deposit of the entire amount being ordered as well as to safeguard the interest of revenue. However, the provision of law nowhere speaks of any requirement of personal hearing. While the main provision makes it obligatory for the appellants to deposit the amount, the proviso gives discretionary power to the appellate authority to reduce the burden regarding pre-deposit upon the assessee subject to the condition as it may deem fit apart from taking into consideration the undue hardship which the appellants may suffer and bearing in mind the revenue interest. Nowhere the provision of law speaks of any requirement of personal hearing before passing any order in exercise of discretionary power.

15. The Delhi High court in **Anil Chanana** case while dealing with the matter under the provisions of Customs (Compounding of Offences) Rules, 2005 and particularly in relation to the proviso to Rule 4(3) of the said rules which provides that where the Compounding Authority intends to reject the compounding application, then application should be heard in the matter and the grounds of rejection shall be mentioned in the order, held that there is no requirement in any provision in the Rules which mandates the Compounding Authority to hear personally the investigating agency in the event the compounding application is allowed. Reference was also made to the decision of the Apex Court in **Jesus Sales Corporation** as well as another Supreme Court decision in the matter of **Travancore Rayon Limited vs. Union of India** reported in 1978 (2) ELT J378 wherein it was observed that "It is true that the rules do not require that personal hearing

shall be given, but if in appropriate cases where complex and difficult questions requiring familiarity with technical problems are raised, personal hearing is given, it would conduce to better administration and more satisfactory disposal of the grievances of citizens". It can hardly ^{be} said that while dealing with the application regarding prayer for dispensing of the deposit, there would arise complex and difficult technical problem, unless a case to that effect is made out with reference to the facts of the particular case.

16. The decision of the Madras High Court in **ITC Limited** case is undoubtedly to the effect that Section 35F of the said Act does not preclude personal hearing and if the order leads to the dismissal of the appeal, the appeal may be rendered nugatory and it deprives the right of fair hearing. It has also referred to the principles of fair hearing. However, while deciding the matter, the Hon'ble High court has made a very relevant observation regarding the matters which were under consideration before the High Court. In para 82 of the decision it has been specifically observed that "Individual orders which is being challenged also, it has to be pointed out without contradiction that the Commissioner (Appeals) had passed a stereotyped chamber orders without much strain and without reference to the merits of the case as well as the financial conditions and surrounding circumstances which might have weighed with him if he had afforded an opportunity or hearing and if he had been apprised of full facts, subsequent events in view of the time lag as well". It was in those circumstances that ultimately orders without hearing were held to be bad in law. That was a decision in peculiar facts of the case before the Hon'ble High Court.

17. The Punjab and Haryana High Court in **Fashion Fair** case has observed that "in the scheme of a taxing stature, unless expressly or by necessary implication exclude, personal hearing is desirable at the appellate stage, though the effect of denial of opportunity differs from case to case". Desirability of personal hearing is different from absolute ^{necessity} ~~necessary~~ thereof. In case of discretionary power the rule of personal hearing is not absolute in the absence of statutory requirement thereof.

18. In **Indian Refrigerator Co. Ltd.** case the Madras High Court decided the matter essentially on the basis of decision in the ITC case.

19. It is, however, pertinent to note, and at the cost of repetition, that the Apex Court in **Jesus Sales Corporation** has specifically ruled that the statutory requirement is that before the appeal is being heard the appellants have to deposit the amount demanded under the adjudication order and dispensation of such deposit is an exception which is entirely in the discretion of the Appellate Authority, albeit to be exercised judiciously. That, however, does not mean that the personal hearing is absolutely necessary.

20. In the cases in hand, it is seen that though initially when the applications for dispensation were filed before the Commissioner (Appeals) alongwith the appeals by the appellants, the same were disposed of without personal hearing to the appellants. Nevertheless they were disposed of with speaking orders communicated to the parties and dispensing with 80% and 50% of the amount demanded under the adjudicating order. By no stretch of imagination it can be held that those orders were passed mechanically or

without application of mind. Besides before dismissal of the appeal for non-compliance of the said order and pursuant to the applications filed by the appellants for modification of those orders, personal hearing was granted to the appellants and after taking into consideration the case put forth by the appellants, they having failed to make out satisfactory case for modification of the said orders, the impugned orders came to be passed. In other words, it can not be said that absolutely no hearing was granted on the issue regarding the requirement of pre-deposit of the amount due and payable under the order passed by the adjudicating authorities. It is not the case that the Commissioner (Appeals) has directed the appellants to pay the entire amount payable under those order, except in one case, and that too for justifiable reason. Besides, the requests for modification of those orders were rejected after hearing the parties and thereafter the appeals were dismissed. In fact, dismissal of the appeal is a consequence of non-compliance of requirement under Section 35F. There is no option left in that regard to the appellate authority unless the appellants are able to make out a case to that effect and undisputedly opportunity to make out a case in that regard was granted to the appellants. Being so, we do not find any illegality in the impugned orders nor it can be said that the orders which were passed on the stay applications are vitiated in any manner.

21. Hence, the appeals fail and the same are hereby dismissed.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/