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

Appeal No. E/2210/2009 - EX[DB] WITH E/S/2289/2009-EX Date **24/11/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S ASP METAL INDUSTRIES
B-6/5, JHILMIL INDUS AREA, SHAHDARA, DELHI.

M/S ASP METAL INDUSTRIES Appellant

Vs

C.C.E. DELHI II STAY ORDER NO. 1273/2011-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.953/ 2011 EX|DB|** dated 11-11-11 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. DELHI II
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult
MR.KAMALJEET SINGH
J-144, PATEL NAGAR -I,GHAZIABAD.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions 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. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.I

E/Stay No.2289/2009 in E/Appeal No.2210/2009

(Arising out of order in original No. 16/2009 dated 30.3.2009 passed by the Commissioner of Customs & Central Excise, Delhi-II)

Date of Hearing: 3.11.2011

For Approval and signature:

Hon'ble Mr S.S. Kang, Vice President
Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

M/s ASP Metal — Appellants

Vs

CCE, Delhi-II — Respondent

Appeared for the Appellant: Shri Kamaljeet Singh, Advocate
Appeared for the Respondent: Shri R.K. Verma , DR

Coram: **Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Shri Mathew John, Member (Technical)

STAY ORDER No. 1273/2011-EX
FINAL ORDER No. 953/2011-EX

Per S.S. Kang:

Heard both sides. The applicant has filed this application for wavier of pre-deposit of duty of Rs.4,15,22,443/-along with interest and penalty of equal amount. The appellant has already deposited Rs.20,62,832/-.

2. The main contention of the appellant is that the impugned order is passed in violation of principles of natural justice as no opportunity of hearing was granted by the Adjudicating Authority. The contention is that notice of hearing was issued fixing two or three nearby dates. The Applicant has received two notices of personal hearing after the due dates and the appellant responded to the Adjudicating Authority vide letter dated 2.3.2009 whereby the applicant specifically submitted that they had received the notices after the due dates and asked for more time to appear before the Adjudicating Authority. The contention is that in spite of this request, the adjudicating authority passed ex-parte order.

3. The Revenue submitted that proper opportunity of hearing was granted by the Adjudicating Authority and appellants had not appeared before the Adjudicating Authority. Therefore, the impugned order is rightly passed.

4. From the facts as mentioned in para 40 of the adjudication order, we find that five dates of hearing were granted to the appellants by issuing two notices. The Adjudicating Authority fixed two or three dates in each notice and there is no mention of the dats

on which the notices of hearing were issued. Further we find that the applicant vide letter dated 2.3.2009 made a request for time to appear before the Adjudicating Authority and the same is not considered. In these circumstances, we find that the amount already deposited is sufficient for hearing the appeal. Pre-deposit of remaining amount of duty, interest and penalty is waived. Stay petition is allowed.

5. With the consent of both the sides, we take up the appeal for disposal.

6. During arguments, the appellants submitted that they are in a position to file final replies to the notices and appear for personal hearing. They have no intention of asking for cross examination or for further date of hearing before the Adjudicating Authority. The appellants showed keenness in finalization of the matter without adopting any delaying tactics.

7. As we find that the impugned order is passed in violation of principles of natural justice, the impugned order is set aside and the appellants are directed to appear before the Adjudicating Authority on 28.11.2011 along with replies to show cause notices and thereafter the Adjudicating Authority will fix the date of hearing and decide the

matter in accordance with law after giving reasonable opportunity for personal hearing. The appeal is disposed of by way of remand.

(Order dictated and pronounced in the open Court.)

(S.S.KANG)
Vice President

(MATHEW JOHN)
Member (Technical)

MPS*