

**Maya Spinners Vs. Cce, Indore**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jan-10-2001

**Appellant :** Maya Spinners

**Respondent :** Cce, Indore

**Judgement :**

1. Upon careful examination of the facts and circumstances of this case as apparent on record and upon hearing both sides, I am allowing this application unconditionally and, in the interest of justice, proceeding to dispose of the appeal itself finally.

2. The appellants are a 100% Export-Oriented Unit and are holders of Private Customs Bonded Warehouse Registration as well as Central Excise registration for manufacture of cotton yarn. A certain quantity of cotton yarn, manufactured by them and cleared from their factory, was exported through M/s ATL Textiles Ltd. on execution of the required bond under Rule 13 of the Central Excise Rules. However, it appears, the required documentary proof of export was not furnished to the Customs authority concerned. Therefore, by show-cause notice, the department sought to recover the Central Excise duty payable on the aforesaid quantity of cotton yarns, amounting to Rs.2,75,908/- and to impose penalty on the appellants. The appellants contested the show-cause notice. The Assistant Commissioner who adjudicated the dispute, confirmed the demand of duty against the appellants and imposed on them a penalty of Rs.30,000/- Against the order of the Assistant Commissioner, the party preferred appeal to the Commissioner

(Appeals). They also filed therein a stay application praying for waiver of pre-deposit of the duty and penalty amounts and for stay of recovery thereof, pending the appeal. The Commissioner (Appeals), without affording any opportunity of personal hearing to the party, disposed of the stay application as per "Interim Stay Order" dated 6/7.7.99, whereby the requirement of pre-deposit of the penalty amount was waived but the duty amount was directed to be paid within a period of three weeks. This order was received by the party on 16.7.99.

Subsequently, they sent a representation dated 17.7.99 to the Commissioner (Appeals) underlining the need of personal hearing in stay applications and citing case law in support of the submission. In the said representation, the appellants specifically requested for recalling the "Interim Stay Order" and passing fresh order after giving an opportunity of personal hearing in the interest of justice. The appellants claim that the representation was sent through courier and that it was duly received by the addressee. Later on, the Commissioner (Appeals) found that the duty amount had not been deposited as per the Interim Stay Order, and proceeded to dispose of the appeal itself on that basis. Accordingly, he rejected the appeal for want of pre-deposit of the duty amount under Section 35F of the Central Excise Act as per order dated 22/23.8.2000, which was passed without granting any opportunity of hearing to the appellants. The appellants are presently aggrieved by this order of the Commissioner (Appeals).

4. Ld. Advocate Sh. Ashutosh Upadhyay for the appellants submits that the Interim Stay Order was passed in violation of the principles of natural justice and that the specific request of the appellants for recalling the said order and passing fresh order after personal hearing was also ignored by the lower appellate authority, which showed the scant respect the said authority had for the principles of natural justice. He further submits that, if the lower appellate authority had given an opportunity of personal hearing to the appellants atleast before the final disposal of the appeal, it would have been possible for the party to state their case on merits before that authority, apart from stating a strong case for complete waiver of pre-deposit of duty amount. The impugned order of Ld. Commissioner (Appeals) rejecting the appeal of the party on the sole ground of non-deposit of duty, without going into the merits of the case, is grossly violative of the principles of natural

justice and, therefore, requires to be set aside, Counsel submits.

5. Ld. SDR Sh. M.D.Singh submits that there is no proof on record to show that the appellant's representation dated 17.7.99 was received by the lower appellate authority. He further submits that, though no personal hearing was given before passing the Interim Stay Order, Ld.

Commissioner (Appeals) very well considered on merit the question whether the appellants could make out a prima facie case for the purpose of waiver of pre-deposit of the duty/penalty amounts. The fact that waiver of pre-deposit was granted in respect of the penalty amount bears testimony to such due consideration by Ld. commissioner (Appeals), submits Ld. SDR. In such circumstances, according to the SDR, the party should be directed to deposit the duty amount in the event of any remand being made of the matter in view of the fact that the final order passed by Ld. Commissioner (Appeals) was not in accordance with the principles of natural justice.

6. I have carefully examined the rival submissions. I find that admittedly, no opportunity of personal hearing was given by the Commissioner (Appeals) to the appellants before passing the Interim Stay Order. Apparently, Ld. Commissioner (Appeals) dispensed with personal hearing, purporting to follow the ruling of the Supreme Court in the case of Jesus Sales Corporation [1996 (83) ELT 486 (SC)]. Ld.

Commissioner (Appeals) grossly mis-conceived the ruling. The said ruling of the apex Court does not give a blanket mandate to all appellate authorities to pass any order as they please in stay applications without personal hearing in all circumstances. In my understanding, the import of the ruling is that a personal hearing may be dispensed with if the appellate authority considers all the relevant facts and circumstances of the case while considering the question whether a direction for pre-deposit of any amount, pending the appeal, should be issued to the appellants and, if so, on what conditions. In the instant case, Ld. Commissioner (Appeals) recorded a finding that the appellants had failed to make out a prima facie case undue hardship. However, no reason whatsoever is seen to have been recorded in support of such finding. It is not discernible from the Interim

Stay Order as to whether the relevant facts and circumstances were duly considered by the lower appellate authority for reaching such a finding. This kind of an order cannot be accepted as having been passed in accordance with the apex Court's ruling. Therefore, it is clearly violative of the principles of natural justice and hence cannot be sustained in law. As regards the final (impugned) order of the Commissioner (Appeals), it has been fairly conceded before me that it is also in violation of principles of natural justice for the reasons already noted.

7. In the light of the above findings, I set aside the Interim Stay Order and the impugned final order of the Commissioner (Appeals) and allow the present appeal by way of remand. Ld. Commissioner (Appeals) shall pass fresh speaking order on the appellants' stay application after careful consideration of all the submissions stated by them in the said application as well as in the subsequent representation dated 17.7.99 and after giving a reasonable opportunity of personal hearing to them. He shall then dispose of the appeal on its merits by way of a speaking order after granting a similar opportunity to the appellants, subject, of course, to the results of the stay application.

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