

IN THE CUSTOM, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

Date of Hearing : 30.5.2012

M/s Alpha Further Airport Retail Pvt. Ltd.

Versus

CC, New Delhi

Stay No. 1237 of 2012 and

Appeal No.130 of 2012

[Arising out of the order-in-original No. RT/ACE/164-165/2011 dated 9.1.2012 passed by the Commissioner of Custom, New Delhi]

M/s Alpha Further Airport Retail Pvt. Ltd.

Appellant

Vs

CC, New Delhi

Respondent

Appearance:

Appeared for Appellant : Shri Ajay Vohra, Shri Vishwanathan shukla, Ms.
Nisha Sangi, Shri Varun Kr. Chopra, Advocates

Appeared for Respondent : Shri Amrish Jain, A.R.

CORAM :

Hon'ble Shri D.N. Panda, Judicial Member

Hon'ble Shri Mathew John, Technical Member

Stay order NO. c/s/157/12-cus dated

Final order No. C/A/150/12-cus

Per **D.N.Panda** :

1. Ld. Counsel suggest that if Revenue encashes bank guarantee to the tune of Rs.2.5 crores (Rupees two and half Crores) out of bank guarantee of Rs 9.00 crores, Valid Up to 27.1.2013 laying with Revenue authority, within two weeks from today that may not prejudice interest of Revenue to hear the Appellant on the basis of reply to the Show Cause Notice submitted today

insealed cover and delivery thereof taken by Id. A.r. transmit the same to the Id. Adjudicating authority.

2. When aforesaid cooperative proposal comes forward from Appellant and also appreciating that Revenue was in dark when there was non-cooperation of the Appellant in the past to complete adjudication, we direct Id. D.R. to transmit the sealed cover stated to have contained reply to the Show Cause notice to Id. Adjudication authority with an advice to extend his cooperation to the Appellant to encash the bank guarantee of the aforesaid extent within two weeks of receipt of this order. Id. Authority upon encashment of bank guarantee to the extent indicated above shall issue notice of hearing.
3. The Appellant shall appear before the Id. Adjudicating authority to cooperate with him for encashment of bank guarantee stated aforesaid for encashment within two weeks of receipt of this order and enable him to proceed for hearing expeditiously. We hope anxiety expressed by us today shall be appreciated by both sides when the Appellant is facing huge demand and gravious charges.
4. If the authority fixes date of hearing the Appellant shall cause appearance before him without seeking adjournment and lead its defence both on facts and law as well as merits of the case against allegation in the Show Cause Notice. Within six weeks of completion of the hearing the authority shall pass appropriate order. We make it clear that failure to carry out aforesaid direction shall render the appeal dismissed. With aforesaid conclusion, we remand the matter back disposing the appeal and stay application.
5. We have not passed above order unmindfully. We are conscious that interest of Revenue shall be prejudiced in absence of such an order as a preventive measure. We have also weighed Appellant's submission that shall cooperate with the authority for passing appropriate order. We are also guided by para-7 of the judgment of the Apex Court in the case of **Dunlop India Ltd. Vs CCE- 1985 (19) ELT 22** and principle laid down in the judgment of Hon'ble High court of Punjab & Haryana in the case of **Smart Ply wood-2012 (275) ELT 359** as well as in the case of **Shiv Seva Sadan Vs. CCE-2009 (237) ELT 695** to order as above.
6. In the result, both stay petition and appeal are disposed of in the manner indicated above.

(Dictated & pronounced in open court)