

(2003) 12 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 15002 of 2003

Shri Ambika Steel Rolling Mills	Vs	APPELLANT
Commr. of C. Ex.		RESPONDENT

Date of Decision : 19-12-2003

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (2006) 200 ELT 530

Hon'ble Judges : N.K. Sud, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : Jagmohan Bansal, for the Appellant; A.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sud, J.—This writ petition is directed against the order of the Commissioner (Appeals) Central Excise & Customs, dated 26.6. 2003 whereby the prayer of the petitioner .assessee for waiver of pre-deposit u/s 35F of the Central Excise Act, 1944 has been accepted only in part on the ground that no financial hardship had been pleaded.

2. Mr. Bansal, learned Counsel for the petitioner, has drawn our attention to the application furnished before the Commissioner, a copy of which has been placed as Annexure P-3. A perusal of the said application shows that the financial hardship had duly been pleaded. The order of the Commissioner, therefore, is based on a wrong factual premise and cannot be sustained on this very ground itself.

3. Counsel for the respondents has not been able to controvert the above mentioned factual position.

4. In view of the above, the writ petition is allowed. The impugned orders dated 26.6.2003 and 11.7.2003 Annexures P-4 and P-6 respectively are set aside and the Commissioner is directed to consider and dispose of the application of the

petitioner Annexure P-3 afresh in accordance with law. The petitioner through his counsel is directed to appear before the Commissioner for further proceedings on 27.1.2004.

5. Copy of the order be given Dasti on payment of usual charges.