

**(1995) 11 AHC CK 0088**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No's. 1083 of 1995

Agarwal Steel Industries

APPELLANT

Vs

Commr. (A), Cus. and C. Ex.

RESPONDENT

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**Date of Decision :** 21-11-1995

**Acts Referred:**

**Citation :** (1996) 63 ECR 243 : (1996) 83 ELT 267

**Hon'ble Judges :** Om Prakash, J; M. Katju, J

**Bench :** Division Bench

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## **Judgement**

1. Brief case of petitioners is that it filed an appeal alongwith the stay application against an order of the Assistant Collector, Central Excise in April, 1995. It is submitted that the stay application was not decided but the appeal was heard finally in 27-7-1995, decision in which is yet to be pronounced.

2. The grievance of petitioners is that without awaiting decision in appeal, recovery proceedings were initiated by respondent No. 3 and petitioners' goods were detained on 2-11-1995.

3. When the petitioners made stay application alongwith memo of appeal as early as April, 1995, it was the duty of the appellate authority to decide the stay application then and there. If the stay application was not decided and the appeal was heard, it was the duty of the appellate authority to decide the appeal without delay and further it is reasonable for respondent No. 3 to await appeal decision before proceeding with the recovery.

4. On the facts and circumstances of the case we direct the appellate authority, respondent No. 1 to decide the appeal expeditiously and we further direct respondent No. 3 not to proceed further with the recovery until decision of appeal operation of order dated 2-11-1995. (Annexure "6") detaining the goods of the petitioners will remain stayed until decision of appeal.

5. A copy of the order may be issued to the parties on payment of usual charges

within two days.