

(1998) 02 AHC CK 0128

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 121 of 1998

Century Laminating Co. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-02-1998

Acts Referred:

Central Excise Rules, 1944 — Rule 230

Citation : (1998) 62 ECC 25 : (1998) 78 ECR 272 : (1998) 102 ELT 553

Hon'ble Judges : V.P. Goel, J; Ravi S. Dhavan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. M/s. Century Laminating Co. Ltd., Ghaziabad has filed the present writ petition, in effect, seeking a prayer that the order of date 27-1-1998 (Annexure P-I to the writ petition) be quashed. This is an order by which under Rule 230 of the Central Excise Rules, 1944 for the purposes of exacting an amount of Rs. 9,59,362/-, goods to the value of Rs. 32,35,200/- have been detained.

2. There are two aspects of the matter, which are relevant. An order was passed on 28-10-1997. The petitioner refers to this Order (an order-in-original) C. No. V(30) Dem/15/97/6827/24-12-1997 dated 28-10-1997 (Annexure P-9). The petitioner contends that this order was received on 26-12-1997. The petitioner acknowledges that this order is open to appeal which has not been filed so far and yet it may be filed until 25th March, 1998.

3. Then there is an order of 29-4-1997 (Annexure P/5). This order on adjudication was passed by the learned Additional Commissioner, Central Excise, Ghaziabad. It confirms three demands consequent upon show cause notices. The demands amount to 2,09,227/-, 3,86,366/- and 3,35,667/-. If the three amounts are added plus another amount of Rs. 28,101.60, reference order of the Additional Commissioner dated 28-10-1997 (Annexure P-9), the gross amount stands at to Rs. 9,59,362/-.

2,09,227/-

3,86,336/-

3,35,667/-

28,101.60 9,59,362/-

Against the order of 29-4-1997, the petitioner accepts that an appeal has been filed before the Commissioner, Central Excise, Ghaziabad. The petitioner contends that this appeal was heard on 5-1-1998 and orders of the appellate authority are awaited.

4. All things considered clearly this writ petition has been filed to obtain a stay which exacts the amount of Rs. 9,59,362/- as consequence of which goods referred to in the order dated 23-1-1998 have been detained. The counsel for petitioner does not disagree in the circumstances that the petitioner could approach the appellate authority, where orders in an appeal are reserved and yet to be announced. Counsel further accepts that in an appeal which may yet be filed by the assessee until 25th March, 1998, an ad interim relief may be sought. In the totality of circumstances, the petitioner Company may seek an ad interim relief in the appeal where arguments have been heard and orders are reserved or in an appeal for which limitation is available, according to the petitioner until 25-3-1998.

5. In the circumstances, this Court refrains from making any comment, which may prejudice the case of petitioner or the respondents Suffice to stay that with an alternative remedy provided the application of the petitioner, if moved, will be considered by the appellate authority in either of the two situations, in the appeal where orders are reserved or the appeal which has yet to be filed.

6. The present writ petition is not maintainable with alternative remedies available and is accordingly dismissed.