(1992) 10 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. Nil of 1992

Coolade Beverages APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 21-10-1992

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 35, 35F
Constitution of India, 1950 — Article 226

Citation : (1993) 64 ELT 385

Hon'ble Judges : M.C. Agarwal, J;D.S. Sinha, J

Bench : Division Bench

Advocate : A.P. Mathur, for the Appellant; Sushil Kumar, for the Respondent

Judgement

D.S. Sinha, J.—Heard Sri A.P. Mathur, learned counsel for the petitioner and Sri Sushil Kumar, learned counsel representing the respondents.

2. A notice dated 26th October, 1987 calling upon the petitioner to show cause as to why short-paid duty of excise amounting to Rs. 3,06,122.24, for the period between 28th April, 1987 and 10th July, 1987 be not recovered from it u/s 11A of the Central Excises and Salt Act, 1944, hereinafter called the Act. The notice was duly replied with. The Assistant Collector of Central Excise, Division-II, Ghaziabad, the respondent No. 3, by means of his order dated 26th November, 1991 confirmed the demand. Aggrieved by the order of the respondent No. 3 dated 26th November, 1991, the petitioner preferred an appeal before the Collector (Appeals), Ghaziabad, the respondent No. 2, u/s 35 of the Act. Alongwith the appeal, the petitioner also filed an application under the proviso to Section 35F of the Act, praying for dispensation of the requirement of the deposit of the amount of duty of excise demanded from it. The appeal and the waiver application were received in the office of the respondent No. 2 on 20th January, 1992. In the meantime, the Superintendent, Central Excise, Range V, Sahibabad sent a communication dated 24th July, 1992 requiring the petitioner to pay the duty adjudged to be payable by it. On receipt of this communication, the

petitioner approached the respondent No. 2 for appropriate orders on the stay-cum-waiver application. The respondent No. 2 fixed 28th August, 1992 for the final disposal of the appeal itself. It is asserted that the appeal was heard finally on 28th August, 1992 but despite lapse of period of about two months no final order has been pronounced. And, in the meantime, the Superintendent, Central Excise, Range V, Sahibabad, District Ghaziabad, is pressing hard for payment of the duty demanded from the petitioner.

3. In the backdrop of the facts and circumstances, stated above, the prayer of the petitioner is that this court may command the respondents not to implement the order dated 26th November, 1991 passed by the respondent No. 3 with regard to the demand of the duty of excise during the pendency of the appeal and the stay-cum-waiver application before the respondent No. 2. In substance, the prayer is for grant of interim relief and normally this court, in exercise of its special constitutional jurisdiction under Article 226 of the Constitution of India, is loath in entertaining the petition merely for interim relief. But, in the circumstances of the case, the court feels that it would be unreasonable to require the petitioner to comply with the order dated 26th November, 1991 passed by the respondent No. 3 during the pendency of the appeal and stay-cum-waiver application, specially in view of the fact that final hearing in the appeal has already concluded and only the judgment is to be pronounced. The court also feels that it would be appropriate to direct the respondent No. 2 to pass final order on the appeal of the petitioner at an early date.

4. For the foregoing reasons, the court directs the respondent No. 2 to pass and pronounce the final order on the appeal of the petitioner within a period of one month from the date of the production of a certified copy of this judgment and order and in the meantime the demand from the petitioner in pursuance of the order of the respondent No. 3 dated 26th November, 1991 shall remain stayed. The petitioner shall produce a certified copy of this judgment and order before the respondent No. 2 within a period of ten days to be computed from today.

Subject to the observations and directions made above, the petition is disposed of finally.

A certified copy of this judgment and order may be issued to the learned counsel for the petitioner within a period of three days on payment of usual charges.