(1985) 09 AHC CK 0042

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 382 of 1985

Dhampur Sugar Mills Limited — APPELLANT

Vs

Collector of Central Excise and Others — RESPONDENT

Date of Decision : 23-09-1985

Acts Referred:

Citation : (1986) 7 ECC 150 : (1986) 25 ELT 488

Hon'ble Judges : K.C. Agrawal, J;A.S. Srivastava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K.C. Agrawal, J.—M/s. Dhampur Sugar Mills Ltd., Bijnor, has filed this writ petition for mandamus directing respondents Nos. 1, 2 and 3 to refund the sum of Rs. 79,493.97.

2. It appears that the petitioner-company was called upon by notices dated 9th May, 1983 and 16th May, 1983 to show cause why they should not be directed to pay duty of Rs. 68,058.05, Rs. 44,086.49 and 4,6,843.40 towards molasses found to have been cleared by the petitioner during the month of March and April, 1983. The petitioner filed an objection stating that the molasses which were controlled commodity was since not allotted by the Excise Commissioner, the Company became entitled to dispose of the same according to whomsoever it liked to do so. Through the order dated 26th November, 1983 the Assistant Collector imposed a duty to the extent of Rs. 68,088.05 for this as excise duty. The petitioner preferred an appeal before the Collector, Central Excise (Appeals) at New Delhi. The appeal was allowed by the order dated 28th June, 1984 and the Assistant Collector''s order dated 26th November, 1983 was dismissed. As a result of this order the petitioner became entitled to the refund of Rs. 79,493.97. The company made an application to the authorities concerned for refunding it to it inasmuch as on the order of the Assistant Collector dated 26th November, 1983 being passed this sum had been deposited by the petitioner with the Central Excise. The authorities did not comply with the direction given by the

Collector, (Appeals) and went on avoiding payment of the same on one pretext or the other; ultimately the occasion which led to the filing of the present writ petition and compelling the petitioner to seek the relief of mandamus directing the respondents to refund the same.

3. A counter-affidavit has been filed on behalf of the respondents contesting the writ petition. The only justification pleaded for not refunding the amount of Rs. 79,493.97 in the counter-affidavit is that the respondents have preferred an appeal to the authorities higher to the Appellate Tribunal along with the application for stay and as both the appeal and the application are pending, the petitioner was not entitled to mandamus.

4. In view of the fact that mere filing of an appeal does not result in staying the proceedings, it did not entitle the respondent to refuse to refund the amount which it was bound to do on account of the allowing of the appeal on 28th June, 1984. Therefore, we are unable to uphold the contention of the counsel appearing for the respondents. Till a stay order was obtained by the respondents, mere filing of the appeal before the Tribunal did not result in granting an automatic stay order in favour of the respondents. If the respondents so desired, they should have prayed for the stay of the order of the Appellate Collector, in the absence of which the actual position of the law appears to us to be that the petitioner is entitled to obtain the amount of Rs. 79,493.97. We accordingly direct the respondents to refund the amount of Rs. 79,493.97 within a month from today, unless the respondents are able to obtain a stay order within this period. Subject to the above observations, this writ petition is allowed.

5. Let a copy of this order be given to the learned counsel for the petitioner at an early date on payment of the usual charges.