(1997) 08 MP CK 0003

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1235 of 1997

Dhar Cement Ltd. APPELLANT

Vs

CCE (A) and Another RESPONDENT

Date of Decision : 29-08-1997

Acts Referred:

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

Citation : (1997) 72 ECR 804

Hon'ble Judges : Deepak Verma, J

Bench : Single Bench

Judgement

Deepak Verma, J.—This petition has been filed under Article 226 of the Constitution of India. The basic and foremost grievance of the petitioner is that against the order passed by respondent No. 2 on 26.2.1997, petitioner has preferred an appeal before respondent No. 1 in the month of April, 1997 but the said appeal has not yet been taken up for hearing. His further submission is that along with the said appeal, he has also submitted an application u/s 35(f) of the Central Excise Act for stay, but this application has also not been taken up for hearing.

2. Shri B.G. Neema, appearing for respondents, on advance copy, submitted that till recently there was no Presiding Officer, posted as Commissioner (Appeals), but now an officer has been posted who is taking up the appeals regularly. His contention is that petitioner''s appeal is also likely to be taken up for hearing shortly.

3. However, Shri Upadhyaya submitted that in spite of the fact that Us is pending, respondent No. 2 is making hectic steps to recover the amount under appeal.

4. It is not in dispute that in identical matters a direction has been given to respondent No. 1 to dispose of the appeal within a certain period and until the appeal and the stay application are taken up for hearing this Court was pleased

to stay recovery proceedings. Both parties have relied on orders passed by this Court on 20.8.1997 (sic) passed in W.P. No. 1259 of 1997 and on 9.7.1997 passed in W.P. No. 901 of 1997 : Girdharilal Sugar and Allied Industries Ltd. Vs. Commissioner of C. Ex. (Appeals), .

5. In this view of the matter I deem it fit to dispose of this petition with the following directions:

(1) Respondents shall not take coercive steps against petitioners for recovery of the amount, for which an appeal is pending before respondent No. 1.

(2) That this order of stay shall continue until petitioner''s application, filed u/s 35(f) of the Central Excise Act, is considered and disposed of on merits by the Appellate Authority.

(3) The Appellate Authority shall make an endeavour to consider and dispose of petitioner''s appeal and the application within a period of four months from the date of communication of order to him.

With the aforesaid directions, this petition stands finally disposed of, but with no order as to costs.

