
(1997) 04 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4532 of 1997

Dwarka Minerals and Chemicals (P) Ltd. APPELLANT
Vs
C.C.E. (Appeals) RESPONDENT

Date of Decision : 04-04-1997

Acts Referred:

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

Citation : (1997) 58 ECC 44 : (1997) 71 ECR 9 : (1997) 93 ELT 330

Hon'ble Judges : N.C. Khichi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Sanjay Goyal, for the Appellant; Arun Nehra, Central Government Standing Counsel, for the Respondent

Judgement

G.S. Singhvi, J.—The only substantive grievance made by the petitioner is against the coercive measures adopted by the Respondent No. 2 for recovery of the demand raised by the said respondent vide order Annexure P1, dated 24-9-1996.

2. The petitioner is engaged in the manufacture of ordinary portland cement. According to the petitioner, its product is classifiable under subheading 2502.22 of the Central Excise Tariff Act and it is entitled to exemption from paying tax under Notification No. 12/95-C.E., dated 16-3-1995. However, the Respondent No. 2 did not accept the claim of the petitioner and issued show cause notice dated 22-5-1996 requiring it to pay Rs. 3,24,870/-. After considering the representation made by the petitioner, the Respondent No. 2 passed order Annexure P1 and confirmed the demand against the petitioner raised vide notice dated 22-5-1996. Aggrieved by the order of the Assistant Commissioner, the petitioner filed an appeal before the Commissioner of Central Excise (Appeal's), Chandigarh u/s 35 of the Central Excise and Salt Act. Along with the appeal, the petitioner filed an application for stay of the demand. However, the appellate authority did not fix any date of hearing. Therefore, the petitioner made

application dated 10-2-1997 and requested the Respondent No. 1 to hear and decide the appeal and the stay application by pointing out that the Respondent No. 2 was threatening to take coercive measures for recovery of the demand. Having failed to evoke any response from the Respondent No. 1, the petitioner has moved this Court and has prayed for quashing of the order Annexure P1 and for restraining the Respondent No. 2 from taking coercive measures for recovery of the amount specified in Annexure P1. The petitioner has also sought a direction to the Respondent No. 1 to decide the stay application filed by it along with the appeal.

3. Looking to the nature of the grievance made in the writ petition, we gave notice of this petition to Shri Arun Nehra, Standing Counsel for the Central Government. Arguments have been heard.

4. As per the averments made in the writ petition, the petitioner has filed appeal against the order passed by the Respondent No. 2. Along with the appeal, it applied for stay of the demand raised by the Respondent No. 2. A period of over three months has elapsed since presentation of the appeal by the petitioner but the same has not been heard. The application for stay filed by the petitioner has also not been considered and decided by the Respondent No. 1. Notwithstanding this, the Respondent No. 2 has started coercive steps to recover the amount specified in Annexure P1.

5. It has been consistently held by the Courts that when a statutory remedy of appeal is available to a party aggrieved against an order passed by an authority which exercises powers under a particular statute, jurisdiction under Article 226 of the Constitution will not be exercised in the normal circumstances. This rule of self-imposed restraint against the exercise of jurisdiction under Article 226 presupposes that the appellate authority will pass appropriate order on the appeal filed by the aggrieved party. If the appellate authority constituted under a statute does not pass an appropriate order on the request made by the appellant for stay and does not hear the appeal filed against the impugned order, the Court may have to take the view that the remedy of appeal is not effective. In order to avoid this situation, it is imperative that the competent appellate authority passes an appropriate order on the request made by the aggrieved party for stay of the order impugned in the appeal.

6. There also does not appear to be any justification for the competent authority like the Respondent No. 2 to initiate coercive measures for recovery of the amount allegedly due from the assessee even before the appellate authority passes an order on the application filed for grant of interim stay. The assessing authority as well as the appellate authority are part of the departmental hierarchy and there does not appear to be any rhyme or reason why appropriate steps could not be taken by the competent authority to dispose of appeal before the assessing authority takes steps for the recovery of the amount allegedly due from the aggrieved party.

7. Shri Arun Nehra, learned counsel appearing for the respondents fairly submitted that the Court may direct the appellate authority to hear and decide the application filed by the petitioner for grant of interim stay and restrain the Respondent No. 2 from effecting recovery till the decision of that application.

8. Having taken into consideration the facts of this case, we dispose of the writ petition by directing the appellate authority to consider and decide the application for stay filed by the petitioner within four weeks. Till then, the Respondent No. 2 shall not take coercive steps for effecting recovery of the amount specified in Annexure P1. However, we make it clear that in the event of rejection of the prayer "for stay, the Respondent No. 2 shall be free to take steps for recovery of the amount due.