
(1998) 04 AHC CK 0012

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 192 of 1998

Ester Industries Ltd.

APPELLANT

Vs

Asstt. Commr. of C. Ex.

RESPONDENT

Date of Decision : 02-04-1998

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (1999) 114 ELT 807

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is a second writ petition by the same petitioner between the same respondents.

2. Before the ink barely dried on the orders of the first writ petition, this one was filed after fifteen days. The first writ petition carried the number Writ Petition No. 149 of 1998 and was dismissed on 17th March, 1998. On the first writ petition, the Court had passed the following orders :-

"The order sought to be impugned, which aggrieves the petitioner, is dated 27-2-1998 (Annexure 8 to the writ petition).

This order has been issued by the Superintendent, Central Excise, Range-1, Khatima, Respondent No. 7.

The petitioner accepts that in some matters Appeals have been filed and are pending and in some matters hearing has concluded but judgment is awaited. Learned Counsel fairly concedes that any interim order which could be passed by the High Court can be passed by the authority which is seized of the Appeals. In the context of the present case the Commissioner (Appeals) u/s 35F of the Central Excises and Salt Act, 1944 is the Appellate Authority, and the petitioner has a remedy to approach the Appellate Authority and seek consideration of an

ad-interim prayer. Rushing in a writ petition before the High Court with an alternate remedy available was misconceived.

The writ petition is consigned to the record and dismissed.

Dated 17-3-1998 Sd/- Ravi S. Dhavan, Sd/- V.P. Goel." 3. On merits this petition is not different than the first one and of any coercive action which the petitioner alleges the respondents are taking wrongly, this aspect is already on the record of the first writ petition. By an order of 27-2-1997, appended as Annexure-8 to the first writ petition, the petitioner received a letter from the Superintendent, Central Excise and Customs, Range - 1, Khatima, referring to seven items, as being the subject matter of adjudication proceedings and orders. This letter gives the number of adjudication cases, the date of the adjudication orders and dues to be paid by the petitioner. The petitioner was given time until 15-3-1998 to deposit the amounts mentioned against the seven items totalling to Rs. 23,79,086.18 to be deposited "either preferably in cash through PLA, failing which positively through your Modvat Account before 15th March, 1998 failing which extreme coercive action for recovery of these arrears will be taken against you for recovery."

4. In the first petition it was accepted that against the adjudication orders requisite appeals were pending before different authorities. In the circumstances, the Court did not consider it appropriate to grant an ad interim order on the petition as truly the petition was filed only for the purposes of seeking a stay order.

5. In the present writ petition, the petitioner again reiterates that he is not challenging the merits of matters but is aggrieved by the coercive steps taken by the department by detaining goods in reference to some adjudication orders, seven of them, referred in the earlier writ petition in Annexure-8. This is the order dated 27-2-1998, referred to in this writ petition also, but as Annexure-"5".

6. The petitioner wrote a letter to the Superintendent, Central Excise, Range-1, Khatima after the first order of the High Court. This is the letter dated 18-3-1998, appended as Annexure - 7 to this writ petition. The amount which is sought to be realised from the petitioner on the adjudication orders is the same amount which was mentioned in the first writ petition. The adjudication cases are also the same seven cases which were the subject matter of the first writ petition. The petitioner mentions in its letter of 18-3-1998 (Annexure "7") that appeals have been filed before the Commissioner of Central Excise (Appeals), Ghaziabad along with stay applications; that the appeals have been heard by the Commissioner Appeals, Ghaziabad in four cases and that in reference to these four cases orders "have already been passed" and "the orders appear to be in transit."

7. Regarding other cases, the petitioner mentions, the cases are "listed in Serial No. 6" and "the appeal has been listed for hearing on 6th April, 1998 and we shall appear on that date and make our submissions." Simultaneously the

petitioner has filed a supplementary affidavit referring to four adjudication orders. In paragraph 3 of this supplementary affidavit affirmed today i.e. (2-4-1998) the petitioner submits that "The petitioner has not challenged the merits of the above adjudication orders, yet to keep record of the writ petition straight, the deponent filed the present affidavit."

8. Clearly the second writ petition has been filed only for the purposes of attempting to seek a stay order from the High Court again as the first one did not succeed. The first writ petition was argued by a Senior Counsel Sri Bharat Ji Agarwal assisted by Sri Piyush Agarwal, Advocate. Now the petitioner has changed Counsel. This exercise is an abuse of the proceedings of the Court.

9. Further, the petitioners have made allegations which are derogatory and of personal nature against the respondents, all officers of the Central Excise Department. The allegations have been made in paragraph 2 of this petition. The affirmation has been made on personal knowledge. The affidavit has been sworn by one Prem Vir Sharma, aged about 35 years, "claiming himself to be an Assistant Officer (Legal)" with the petitioner Company. The Court has reservations whether the petitioner Company can make such allegations against party respondents, without arraying the respondents facing allegations, as parties to the writ petition. These respondents will be within their rights to seek an action for damages or otherwise in an appropriate forum. The Court is not inclined to interfere in this writ petition.

The petition is, accordingly, dismissed.