(1998) 02 AHC CK 0126

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 71 of 1998

Gangeshwar Limited APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 09-02-1998

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (1998) 78 ECR 275 : (1999) 105 ELT 11

Hon'ble Judges : R.K. Gulati, J;M.C. Agarwal, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. We have heard learned Counsel for the parties.

2. The petitioners preferred two appeals before the Commissioner (Appeals) Central Excise, Allahabad on 19-9-1997 which were registered as Appeals No. 230-CE/97/Appl. Alld. and 232 CE/97/Appl/Alld. Along with the appeals it is said that the petitioners had also filed stay and waiver applications praying for waiver of the pre-deposit and the stay of the disputed amount of excise duty in terms of Section 35F of the Central Excise Act. The case of the petitioner is that instead of passing any order on the waiver and stay applications, the Appellate Authority heard the appeals on merits on 25-8-1997 and the orders were reserved. Without availing the decision in the appeals of Assistant Commissioner, Central Excise Division, Gorakhpur ,third respondent has proceeded with the realisation of the disputed demand inasmuch as certain goods of the petitioner have been detained. It is said that when this action was taken the petitioner immediately sent an application dated 3-1-1998 and thereafter a reminder on 15-1-1998 requesting the appellate authority to decide the stay/waiver applications in view of the subsequent development, if for some reasons appeals cannot be decided immediately. The complaint of the petitioner is that neither the appeals have been decided nor the stay/waiver applications have been disposed of. It is in these circumstances the petitioner has preferred this writ petition.

3. On 5-2-1998, Shri A.K. Sinha who has accepted notice on behalf of the respondent was directed to obtain instructions from the appellate authority. We are informed by Mr. Sinha that the Commissioner (Appeals), the second respondent, is out of station on account of election duty and may not be available until the elections are over.

4. On the facts stated above and considering the arguments of learned Counsel for the parties we dispose of the writ petition finally with the directions that the recovery of excise duty which are the subject matter of the aforesaid appears shall remain stayed until the appeals or stay or waiver applications are decided or until 31-3-1998 whichever is earlier. We further direct that the petitioner will file a certified copy of this order on or before 5th March, 1998 before the second respondent who is directed to decide the appeals within three weeks the certified copy is filed. However, if for any reasons the appeals cannot be decided then the stay/waiver applications may be decided within the same period. It is made clear that if the stay and waiver applications have already been decided then the protection given under this order will not be available to the petitioners and the respondent will be at liberty to proceed against the petitioners in terms of the orders that may have been passed on the stay/waiver applications.

5. Subject to the above the writ petition shall stand disposed of.

