

(1996) 06 AHC CK 0004
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 430 and 431 of 1996

Gangeshwar Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 25-06-1996

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F

Citation : (1997) 90 ELT 27

Hon'ble Judges : Palok Basu, J

Bench : Single Bench

Advocate : A.P. Mathur, for the Appellant; U.N. Sharma, for the Respondent

Judgement

Palok Basu, J.—Both the writ petitions raise identical questions. M/s. Gangeshwar Limited, Deoband through S.K. Dhar, authorised signatory is the petitioner in both these cases in which Union of India, Collector (Appeals) now designated as Commissioner (Appeals), Central Excise, Ghaziabad, Assistant Collector now designated as Assistant Commissioner, Central Excise, Saharanpur and Superintendent, Central Excise, Range IV, Saharanpur are Opposite parties. Shri A.P. Mathur, learned counsel for the petitioner has been heard which has been opposed by Shri U.N. Sharma.

2. Admitted facts are that four individual demands have been made against the petitioner, the highest one being Rs. 36,00,000/- one and Rs. 5,00,000/- and odd in the other case. The petitioners have preferred appeals which are pending. They simultaneously made an application for interim order staying realisation of demands made and penalty imposed. Such an application was made under 35F of the Central Excises and Salt Act, 1944.

3. Being pressed by the demands, fresh applications for interim orders of waiver were moved before the Commissioner. He has fixed 9-7-1996 for adjudication of the application for stay order plus waiver application. It was argued by Shri Mathur that so long as the application for waiver and interim order is not taken

up, the demand made by the authority concerning the levy and penalty is without any legal basis. Shri U.N. Sharma, learned counsel has made a statement at the bar, that so long as the interim application and waiver application is not decided by the Commissioner (Appeals), Central Excise, Ghaziabad where the appeals of the petitioner are pending, realisation of the demand concerning which the appeals are pending, shall not be made.

4. In view of the aforesaid statement of Standing Counsel, the writ petition is finally disposed of with the direction that so long as the applications of the petitioner praying for interim orders and waiver of demand and penalty are pending, the petitioner shall not be called upon to deposit the same. The Commissioner is however directed not to adjourn the case and decided the applications, if not appeals themselves, if possible on the date fixed on within two months from today.

5. Certified copy of this may be issued to the learned counsel for the petitioner on payment of usual charges within twenty four hours.