(1987) 02 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 52 of 1987

General Electric Co. of India Ltd. APPELLANT

Vs

Assistant Collector Central Excise Division and Another RESPONDENT

Date of Decision : 17-02-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1987) 13 ECC 226 : (1989) 20 ECR 351 : (1987) 31 ELT 882

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

Bench : Division Bench

Judgement

1. The petitioner M/s. General Electric Co. of India Ltd., Naini, Allahabad, has filed this writ petition under Article 226 of the Constitution, for a direction to the Assistant Collector, Central Excise Division, Allahabad, to comply with the directions given by the Collector, Central Excise (Appeals) dated 1-2-1985 in appeal No. 23-C/Alld./85. The relevant portion of the directions as under :-

"In the circumstances, the appeal succeeds on merit is accordingly admitted. The order of the Assistant Collector dated 1-3-1980, is set aside and remanded to the Assistant Collector with the directions for the grant of refund after examining the aspect of time bar alone, as the same is admissible on merits."

2. The complaint of the petitioner is that despite several efforts made on its behalf, the Assistant Collector, Central Excise, has not paid any heed not only to the request made on its behalf but also not complied with the direction of the Collector (Appeals). The learned counsel for the petitioner urged that the petitioner, in the circumstances mentioned above, is entitled to a mandamus being issued to the said respondent No. 1 to decide the matter in consequence to the direction of the appellate authority.

3. A counter affidavit has been filed on behalf of the respondents. Among others one of the things stated in Para 10 of the counter affidavit, is that against the aforesaid order of the Collector (Appeals), New Delhi, a second appeal has been

preferred before the Tribunal and that the same is pending. It has further been averred that on the stay application moved before the Appellate Tribunal of Customs, Excise and Gold (Control), New Delhi, for a direction to stay the operation of the order of the Collector (Appeals), 6th March, 1987 has been fixed by the Tribunal. This statement of date was orally made by Sri N.B. Singh learned counsel for the Union of India.

4. Having heard the counsel for the parties. We are of the opinion that the direction given by the Collector (Appeals) has to be complied with, unless its operation is stayed Up till now, there is no stay order. It is settled that unless stay order is passed, the operation of any order does not get stayed automatically.

5. In the present state of affairs, as they exist, it appears to us proper that the Assistant Collector, Central Excise. Allahabad be directed to comply with the direction given by the Collector (Appeals) and decide the controversy as per order aforesaid. We consequently, direct the Assistant Collector, Central Excise, Allahabad to decide it within six weeks. This will of course, be subject to any stay which is given by the Appellate Tribunal of Customs, if any stay is granted by the Tribunal, it will not be necessary for the Assistant Collector to comply with the order of the Collector (Appeals) and to act in accordance with the stay which may be passed by the Appellate Tribunal of Customs, Excise and Gold (Control), New Delhi.

6. Subject to the above, the writ petitions disposed of.

