

(1992) 01 AHC CK 0091

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1128 of 1991

Kalpanakala Kendra

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-01-1992

Acts Referred:

Citation : (1992) 43 ECR 126 : (1993) 64 ELT 180

Hon'ble Judges : M. Katju, J;A.N. Varma, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

A.N. Varma, J.—No counter-affidavit has been filed despite time having been granted repeatedly by this Court. We are, accordingly, disposing of this petition finally on the facts as stated in the petition.

2. Challenging the demand of customs duty from the petitioner in the sum of Rs. 27,33,905/- claimed on account of non-fulfillment of the petitioner's export obligations under the Duty Exemption Scheme, the petitioner filed a writ petition in this Court on the ground that the demand was wholly arbitrary and unsustainable as the petitioner had more than fulfilled his export obligations by exporting the goods (paper) worth much than it was legally required to do. The Court did not, however, go into the question whether the petitioner had actually fulfilled his export obligations. Instead the Court disposed of the petition finally by its order dated 9-5-1991 directing the petitioner to file all his papers in support of its defence and the authority to look into the matter and decide the issue whether the claim of the petitioner had any substance. The Court granted six weeks' time to the respondents from the date on which certified copy of the order was produced before them to decide the petitioner's claim after the petitioner had filed the papers within the specified time. The Court further ordered that the recovery of the impugned demand shall subject to the petitioner's filing certified copies of the Court's order and the papers in support of its claim remain stayed for a period of three months from the date of the order

or till the respondents 2 and 4 pass final orders on the petitioner's representation "whichever is earlier".

3. Petitioner asserts that it had duly complied with the directions of this Court by submitting all the material as well as a copy of the Court's order within the prescribed time. It is further alleged that the period of three months fixed by this Court has expired and no decision has been taken by the respondents 2 and 4. And even though no decision was taken by the authorities within the time fixed by this Court, they have revived the recovery proceedings and are pressing the impugned demand.

4. It is apparent from a perusal of the order passed by this Court on 9-5-1991 that it was hoped that the authorities would decide the matter within the stipulated period and for that duration the recovery was ordered to remain stayed. It was, perhaps, not contemplated at that stage that the authorities shall without deciding the matter within the prescribed period proceed to recover the amount. The basic idea was that the dispute should be resolved expeditiously.

5. Learned counsel for the petitioner contends that the representation of the petitioner remains undisposed of even though a certified copy of the order passed by this Court along with all the relevant papers had been duly served on the respondents within the time specified by this Court. The assertion is supported by postal receipts. No counter-affidavit has been filed. We are, hence, entitled to assume that the facts stated in the petition are correct. That being so, initiation or revival of recovery proceedings seems plainly unfair and unjust.

6. We, accordingly dispose of this petition with the direction that subject to the petitioner's filing a certified copy of this order on each of the respondents within two weeks the recovery of the impugned demand dated 12th September, 1989 (Annexure 6 to the petition) and warrants of sale dated 16th January, 1991 and 30th January, 1991 (Annexures 11 and 12 to the petition respectively) shall remain stayed until the decision in the matter in dispute as envisaged in this Court's judgment and order dated 9-5-1991 (Annexure 14 to the petition). It is made clear that this order shall have no effect or operation in case the petitioner's representation dated 21-5-1991 (Annexure 16 to the petition) has already been decided and disposed of in compliance with this Court's direction dated 9th May, 1991.

7. A copy of this order may be given to the learned counsel on payment of requisite charges within three days.