**(2019) 08 UK CK 0216**

**In the Uttarakhand High Court**

**Case No :** Special Appeal No. 807 Of 2019

Kheem Singh Jeena APPELLANT

Vs

State Of Uttarakhand And Others RESPONDENT

**Date of Decision :** 29-08-2019

**Acts Referred:**
Uttar Pradesh Excise Act, 1910 — Section 11, 11(1)

**Citation :** (2019) 08 UK CK 0216

**Hon'ble Judges :** Ramesh Ranganathan, CJ;Alok Kumar Verma, J

**Bench :** Division Bench

**Advocate :** P.C. Petshali, Pradeep Joshi

**Final Decision :** Disposed Of

## Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred, by the appellant-writ petitioner in WPMS No. 2179 of 2019, aggrieved by the order of the learned Single Judge dated 30.07.2019 dismissing the writ petition.

2. The appellant-writ petitioner was allotted a foreign liquor shop at Kashipur in District Udham Singh Nagar. On the ground that the appellant-writ petitioner had failed to deposit the instalment for the month of January, 2019, proceedings for recovery of State dues was initiated; and a recovery citation was issued against the appellant-writ petitioner for recovery of Rs.3,69,342/-.

3. After taking note of the submission, urged on behalf of the State Government, that the order under challenge is an appealable order under Section 11 of the U.P. Excise Act, 1910, and the appellant-writ petitioner was deliberately avoiding this remedy, as he had to first deposit twenty-five percent of the amount, the learned Single Judge observed that, since the appellant-writ petitioner had a statutory remedy under Section 11 of the U.P. Excise Act, 1910, no interference was called for in the matter.

 

4. Section 11(1) of the U.P. Excise Act, 1910 stipulates that all orders passed by the Collector, or other officers, under the Act shall be appealable to the Excise Commissioner in the manner prescribed by rules made by the State Government in this behalf. In terms of the proviso thereto, no appeal shall be entertained under sub-section (1), unless it is preferred by the aggrieved person within thirty days from the date of communication of such an order; and unless the appellant has furnished satisfactory proof of having paid a sum of not less than 25 per cent, of the disputed amount of tax, fee, penalty or other dues, if any, as the case may be. The second proviso enables the appellate authority, for special and adequate reasons to be recorded in writing to waive or relax the requirement of the preceding proviso in respect of such disputed amount of tax, fees, penalty or other dues. While it is no doubt true that the limitation, for preferring an appeal, under Section 11(1) of the Act, is 30 days, there does not appear to be any embargo thereunder for the Excise Commissioner to entertain an appeal after the stipulated period of 30 days. In the light of the order passed by the learned Single Judge, it is always open to the appellant-writ petitioner to satisfy the Excise Commissioner that there was reasonable cause for the delay in preferring the appeal.

5. Mr. P.C. Petshali, learned counsel for the appellant-writ petitioner, would submit that, after dismissal of the writ petition, the petitioner had deposited Rs.1,20,000/- by way of two separate challans, one for Rs.70,000/- and the other for Rs.50,000/-, both dated 06.08.2019; and the amount so paid, albeit after dismissal of the writ petition, may be directed to be taken into consideration in computing 25% of the disputed amount of tax, fee, penalty or other dues, required to be deposited for an appeal to be entertained. Suffice it, in such circumstances, to modify the order of the learned Single Judge to the limited extent that the Excise Commissioner shall also consider, in accordance with law, whether the sum of Rs.1,20,000/- paid by the appellant-writ petitioner, after the writ petition was dismissed, can be treated as part of the 25% amount required to be deposited, in terms of the first proviso to Section 11(1) of the Act, for the appeal to be entertained.

6. With the aforesaid observations, the Special Appeal is disposed of. No costs.

7. Let a certified copy of this order be issued to the learned counsel for the parties, on payment of the prescribed charges, by 30.08.2019.

 