

(1992) 08 AHC CK 0077

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 815 of 1992

K.K. Kohawal

APPELLANT

Vs

Addl. Collector of Central Excise

RESPONDENT

Date of Decision : 05-08-1992

Acts Referred:

Central Excise Rules, 1944 — Rule 209A, 52A(5)
Central Excises and Salt Act, 1944 — Section 12
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 115

Citation : (1993) 64 ELT 182

Hon'ble Judges : D.S. Sinha, J;A.N. Gupta, J

Bench : Division Bench

Advocate : Ashok Khare, for the Appellant; Shishir Kumar, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—Hoard Sri Ashok Khare, learned counsel for the petitioners and Sri Shishir Kumar, learned counsel representing the respondents, at length and in detail.

2. The petitioners are the owners/drivers of the trucks seized for violation of the provisions of the Central Excise Rules, 1944.

3. By means of the impugned notices dated 5th June, 1992 they have been called upon to show cause as to why :-

(a) their trucks may not be confiscated u/s 115 of the Customs Act, 1962 as applicable to Central Excises and Salt Act, 1944 in terms of Section 12 of the said Act;

(b) penalty may not be imposed on them under Rule 52A(5) and 209A of the Central Excises Rules, 1944.

4. The contention of the petitioners before us is that on the facts and

circumstances of the case, they cannot be held to have contravened any provision of the law and as such the impugned notices are wholly illegal and without jurisdiction.

5. Upon giving our anxious consideration, we are clearly of the opinion that the contention of the petitioners can better be appreciated by the authorities before whom they are required to show cause inasmuch as adjudication of the controversy depends upon the investigation of facts and appreciation of evidence thereon which cannot be done by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

6. There is another aspect of the matter, namely, the petitioners have approached this court rather prematurely without even answering the show cause notices issued to them. Hitherto no orders adverse to them have been passed.

7. Ordinarily, jurisdiction under Article 226 of the Constitution of India ought not to be exercised to obstruct a course prescribed by a valid statute.

8. For the foregoing reasons, we are not inclined to interfere in the matter at this stage. However, considering the fact that the period stipulated in the impugned notices for furnishing reply has expired, we permit the petitioners to file reply within thirty days from today and if they so file their reply, the same shall be treated to be within time.

9. Subject to the observations and directions made above, the petition is dismissed.