**(1993) 09 AHC CK 0006**

**In the Allahabad High Court**

**Case No :** Civil Misc Writ Petition No. 1437 of 1993

L. Kant Paper Mills Pvt. Ltd. APPELLANT

Vs

Collector of Central Excise RESPONDENT

**Date of Decision :** 22-09-1993

**Acts Referred:**

Central Excise Rules, 1944 — Rule 173Q, 226, 52A, 9(2)
Central Excises and Salt Act, 1944 — Section 35
Constitution of India, 1950 — Article 226

**Citation :** (1994) 55 ECR 42 : (1994) 71 ELT 900

**Hon'ble Judges :** D.P.S. Chauhan, J;Anshuman Singh, J

**Bench :** Division Bench

**Advocate :** Rakesh Ranjan Agrawal, for the Appellant; Umesh Narain Sharma, Senior Standing Counsel, for the Respondent

**Final Decision :** Dismissed

## Judgement

Anshuman Singh, J.—Heard Shri Rakesh Ranjan Agarwal, Counsel for the petitioner and Shri Umesh Narain Sharma, learned Senior Standing Counsel appearing for the Union of India. It is alleged that the petitioner is a holder of L-4 licence who is engaged in the manufacture of Duplex Board falling under Chapter sub-heading 4805.30 of the Excise Tariff Schedule in its factory premises at Rania, Kanpur Dehat. It is alleged that the factory of the petitioner was visited by the Preventive Officers, Central Excise Kanpur on 14-9-1991 and various records were seized by the aforesaid authorities. After the seizure of the documents show cause notice was issued to the petitioner on 15-8-1991. In pursuance of the aforesaid show cause notice, the petitioner submitted a detailed reply and the Collector, Central Excise, Kanpur Dehat, after considering the reply submitted by the petitioner passed an order on 14-10-1992 confirming the demand of central excise amounting to Rs. 22,67,723/- against the petitioner and also imposed a sum of Rs. 50 lacs as penalty on the petitioner under Rule 9(2), 52A, 173Q and 226 of the Central Excise Rules. A copy of the said order has been filed as Annexure 2 to the writ petition.

 

2. Feeling aggrieved against the order of the Collector, Central Excise, Kanpur, the petitioner has filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi under ''Section 35 of the Central Excises and Salt Act, 1944. During the pendency of the said appeal, the petitioner also filed an application for staying the operation of the order dated 14-10-1992 and for dispensing with the pre-deposit of duty amounting to Rs. 22,67,723/- and penalty imposed on the petitioner by the Collector, Central Excise, Kanpur. The said stay application was disposed of by the Tribunal on 21-7-1993 a copy of which has been filed as Annexure 6 to the petition. The appeal filed by the petitioner is still pending before the Appellate Tribunal.

3. The petitioner, feeling aggrieved against the order of the Tribunal on the stay application, has come to this Court under Article 226 of the Constitution of India. Learned counsel for the petitioner has contended before us that the Tribunal while disposing of the interim application filed by the petitioner has not taken into account likely financial hardship to be caused to the petitioner and in this way it acted arbitrarily. From the perusal of the order of the Tribunal on the stay application, it is clear that the Tribunal after taking into account the financial hardship that may be caused to the petitioner reduced the amount from Rs. 22,67,723/- to 12,00,000/- towards duty as well as the penalty from, 50,00,000/- to Rs. 5,00,000/-.

4. In view of the said fact, we are unable to accept the contention raised on behalf of the petitioner that the Tribunal has not taken into account the hardship to be caused to the petitioner. Moreover, the order passed by the Tribunal is a interlocutory order and no final order has been passed as the appeal is still pending.

Normally, in our opinion, this Court should not interfere under Article 226 of the Constitution of India against an interim order which is purely interlocutory in nature particularly when there is no apparent error on the face of the order passed by the appellate authority. Moreover, in the instant case, the appellate authority has applied its mind fully and has reduced the amount of duty and penalty. In view of the said fact, we are not inclined to interfere in this petition and the same is accordingly rejected.

 