(1998) 02 AHC CK 0003

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 118 of 1998

L.M. Steels (P) Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 26-02-1998

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35F

Citation : (1998) 78 ECR 274 : (1998) 103 ELT 220

Hon'ble Judges : V.P. Goel, J;Ravi S. Dhavan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The apprehension which the petitioner has had submitted through counsel apparently is not on record.

2. All that has happened is that in reference to an assessment proceedings being an order of the Additional Commissioner, Central Excise, Ghaziabad dated 13 November, 1997, a duty of Rs. 14,16,730.40 (sic), a penalty of Rs. 7 lacs had been imposed. Against this assessment order, a remedy of an appeal has been provided under the Central Excises and Salt Act, 1944. In the matter of deposit of duty demanded or penalty levied pending appeal Section 35F provides the procedure and modalities. The context of the matter is not the alternate remedy, but the deposit of the duty. In this regard also the proviso to the aforesaid section provides that if an assessee applies seeking a waiver of the duty which is to be deposited along with the memoranda filing of appeal, the appellate authority may for reasons recorded grant the waiver and entertain appeal.

3. During the pendency of the appeals came the general election to return Members of Parliament to the Lok Sabha. Fortunately or unfortunately, the Commissioner, Appeals, Ghaziabad, was posted on election duties to Gujarat. The assessee also mentions this in paragraph 12 of the writ petition. The assessee also mentions in paragraph 11 that the Commissioner, Appeals, had heard the

appeal on 19 February, 1998 and neither any orders on the appeal could be passed nor any orders on the waiver application. In the meantime, the assessing authority pressed for the demand. The petitioner indicated to the assessing authority the fact that the appellate authority is out on election duty. The petitioner also mentions in the writ petition that the Superintendent, concerned, indicated to the petitioner that he would wait for ten days, regard being had to the circumstances, and would not press the demand. The ten days time are not over as yet. That indulgence or the demand of the assessing authority being in abeyance is mentioned by the petitioner himself in paragraph 11 of the writ petition. In so far as the recovery is concerned, to which the petitioner refers to, there is no such recovery nor any recovery proceeding. The petitioner only received a communication of 20th January, 1998, making a request to the assessee that in reference to the appeal which has been filed, the interim order from the appellate authority be forwarded. It is not unusual for the assessing authority to enquire and seek if an interim order has been granted.

4. Now when the Commissioner, Appeals, returns from election duty, the petitioner''s appeal will be up for consideration. It will be entirely up to the Commissioner, Appeals to either pass an order for waiver of the amount or such amount may need to be deposited.

5. This Court cannot comment on any aspect of the matter as this is the discretion provided to the appellate authority u/s 35F.

6. Truly, this writ petition has only been filed for obtaining an interim order when the waiver part of it is a discretion of the Commissioner, Appeals.

7. The writ petition is misconceived and is, accordingly, dismissed.

