

(1991) 04 AHC CK 0004

In the Allahabad High Court

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

Rubber Complex (India) Ltd.

APPELLANT

Vs

Union of India (UOI), Cegat and Another

RESPONDENT

Date of Decision : 25-04-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A

Citation : (1992) 38 ECR 15

Hon'ble Judges : B.P. Jeevan Reddy, C.J.;R.P. Mehrotra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Jeevan Reddy, C.J.—We are unable to see any substance in the writ petition. It is directed against an interlocutory order made by CEGAT, rejecting application for stay, pending appeal. The allegation against the petitioner was that of clandestine removal of dutiable goods without paying duty. The show cause notice was issued by the Superintendent, Central Excise but the final orders were passed by the Collector, Central Excise. The argument of the petitioner is that the allegation of clandestine removal amounts to allegation of fraud and suppression and, therefore, proviso to Section 11A(1) is attracted and the show cause notice could have been issued only by the Collector. This is a question, which would have to be gone into by the Tribunal in the appeal finally.

2. Having regard to the nature of allegation and the fact that the order of stay is discretionary, we are not inclined to interfere in the matter. We are also not persuaded that the Tribunal has exercised its jurisdiction erroneously.

3. The writ petition accordingly fails.

4. However, it is directed that there shall be stay of penalty, pending disposal of the appeal before the appellate court.

5. The time for depositing duty is extended up to 20.5.1991.