
(1998) 04 AHC CK 0026

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 234 of 1998

Samtal Color Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 22-04-1998

Acts Referred:

Citation : (1998) 78 ECR 266 : (2000) 116 ELT 27

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is a second Writ Petition by the petitioner M/s. Samtal Color Ltd. The first one was numbered as Writ Petition No. 120 of 1998 on which this Court passed orders on 2-3-1998.

2. The prayer in this Writ Petition does not appear to be much different than the first one. Regard being had to the submissions made in this Petition, one aspect before the Court is that the affidavit in a matter like this ought to have been filed by a responsible person, in reference to a Public Limited Company at least by the Company Secretary or the person authorised and Incharge of Finances.

3. The petitioner has received a Memorandum from the Superintendent, Central Excise, Range-V, Div. III, Ghaziabad dated 15-4-1998. The petitioner Company has been advised that if it fails to produce the stay order for recovery or fails to deposit the amount, as has been assessed, in reference to the context, within the specified time then auction will be initiated against the petitioner Company under the Central Excise Rules. Reference of the stay order in context of the Appeal which has been filed by the petitioner before the Commissioner, Customs and Central Excise (Appeals) Ghaziabad, respondent No. 1. The petitioner seeks a certiorari that intimation of the Superintendent, Central Excise aforesaid, dated 15-4-1998 (Annexure-V to the Writ Petition) be quashed. Insofar as the order is concerned or the authority, there is no issue that there is lack of jurisdiction in

the authority to pass the order or for that matter the order suffers from manifest error to occasion issue of Writ of Certiorari.

4. Of the grievance the petitioner is that in the Appeal which has been filed, either the Appeals or the stay applications, are not being considered. The authority, whose order is sought to be quashed, has itself indicated that a stay order may be obtained from the Appellate Authority, failing which whatever be the amount assessed, they will be pressed for recovery.

5. In paragraphs 10 and 11 of the Petition, the petitioner contends that on several occasions office of the respondent No. 1, the Appellate Authority, was visited with a request that disposal of the Appeals and the stay applications be expedited. The petitioner is a corporate body and could not itself have visited the office of the Appellate Authority and in these circumstances if any request had been made to the Appellate Authority it ought to have been subject matter of record. There is nothing on record that between the last order on the first petition and the present petition at any stage, the petitioner moved the Appellate Authority with the request that the Appeals or the stay applications ought to be considered at the earliest as adjudicating authority is the person hearing for deposit of the amount assessed. It appears that the petitioner has yet to approach the Appellate Authority placing the difficulties which have been faced in this petition and make a request that the Appeals or the stay applications or both ought to be considered of (sic) ad-interim order be given to the Appellate Authority that the demand pending Appeal be remain in abeyance. This request on record of the Appellate Authority is absent in the Petition. The Court does not understand why it took the petitioner to move this Court by a second writ petition when it should have been moved with the same request to the Appellate Authority. In the circumstances, it will not be open to give any direction on this writ petition.

6. Learned Counsel for the petitioner prays that the decisions which have been appended to in the writ petition itself be considered. The Court has considered the judgments which were cited. As the judgments are attached to the writ petition they are not to be referred to. The situation is entirely different and no parallel can be done on the judgments relied upon. The petitioner has yet to approach the Appellate Authority and seeks expedite disposal of those appeals or the stay applications. The learned Counsel for the petitioner has contended respondents to stricture as has been done in the cases cited. The Court is of the opinion that this may not be the appropriate state.

7. Thus, the writ petition is consigned to the record but formally as dismissed.