**(1968) 10 AHC CK 0019**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ No. 1845 of 1962

Suraj Narain Shukla APPELLANT

Vs

Superintendent Central Excise, Varanasi and Another RESPONDENT

**Date of Decision :** 17-10-1968

**Acts Referred:**

Central Excises and Salt Act, 1944 — Section 12, 35
Sea Customs Act, 1878 — Section 189

**Citation :** AIR 1969 All 524

**Hon'ble Judges :** R.S. Pathak, J

**Bench :** Single Bench

**Advocate :** K.P. Agarwal, for the Appellant; S.N. Kakkar, for the Respondent

**Final Decision :** Allowed

## Judgement

R.S. Pathak, J.—The petitioner carries on the business of manufacture and sale of oil. He owns an oil expeller and four kolhus. On June 29, 1961, the Superintendent Central Excise, Varanasi, made an order stating that on a surprise visit to the Mill premises, he found the seal fixed to one expeller broken and the expeller in use and because of the breach of Rule 96(Q) of the Central Excise Rules, 1944, thereby he imposed a personal penalty of Rs. 100/- under Rule 96(S) and also demanded compounded levy in respect of the expeller at the rate applicable to a mill working for more than 96 hours per week. He also mentioned that two kolhus on which the compounded levy had been originally paid at the monthly rate under table I would be liable to payment at the weekly rate under table II of the Government Notification. This order was followed by a notice of demand dated August 12, 1961 particularising the different amounts payable by the petitioner under the aforesaid compound levy, the total of which came to Rs. 2913.36. The petitioner preferred an appeal but the appeal has been rejected as not entertainable on the ground that he had not deposited the personal penalty and the duty payable pursuant to the order under appeal. By this petition the petitioner has prayed for a number of reliefs. The only relief pressed by him in the course of the hearing of the petition is for certiorari quashing the order declining to entertain the appeal.

2. So far as the deposit of the personal penalty of Rs. 100/- is concerned, there is no dispute between the parties that the amount was actually deposited before the appeal was filed. The dispute is confined to the question whether the petitioner was obliged to deposit the amount of duty imposed by the Superintendent of Central Excise before the appeal could be entertained,

3. Section 35 of the Central Excises and Salt Act, 1944 provides for appeals. Rule 213 of the Rules made under that Act, provides that an appeal against an order or decision of the Superintendent shall lie to the Deputy Collector to whom such Superintendent is subordinate and, where there is no Deputy Collector, to the Collector or the Deputy Collector incharge of the Collectorate. Section 12 of the Act provides:--

"The Central Government may, by notification in the official gazette, declare that any of the provisions of the Sea Customs Act, 1878, relating to the .... offences and penalties, confiscation, and procedure relating ...... appeals, shall with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by Section 3."

To give effect to that provision, the Central Government published notification No. 69/59 P. No. 35/15/58 CH-I, dated July 18, 1959 declaring that the provisions, inter alia, of Section 189 of the Sea Customs Act 1878 relating to matters specified therein, shall be applicable in regard to like matters in respect of the duties imposed by Section 3 of the Central Excises and Salt Act. The Collector, Central Excise, invoked Section 189 of the Sea Customs Act, 1878 which provides that the owner of goods desirous of appealing against the decision or order relating to any duty or penalty leviable in respect of such goods, shall pending the appeal, deposit the amount demanded by the officer, passing such decision or order. The Collector, finding that the duty imposed as a result of the order under appeal had not been deposited by the petitioner, held that the appeal was not maintainable.

The law on the subject has now been clearly laid down by the Supreme Court in Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava, where it has been held that the obligation imposed upon a person u/s 129 of the Customs Act, 1962 to deposit the duty or penalty pending the appeal is ultra vires. The Supreme Court pointed out that Section 12 of the Central Excises and Salt Act enables the Central Government to apply the provisions of the Sea Customs Act in respect of the procedure only relating to appeals and inasmuch as the provision in Section 129 requiring the appellant to deposit the duty or penalty pending an appeal whittled down the substantive right of appeal it could not be regarded as procedure relating to appeal. A perusal of Section 129 of the Customs Act, 1962, will show that it corresponds to the provisions contained in

Section 189 of the Sea Customs Act, 1878. Accordingly, it is clear that to the extent that the notification made by the Central Government u/s 12 of the Central Excises and Salt Act, applies the provisions of Section 189 of the Sea Customs Act, it must: be held to be ultra vires. Clearly, therefore, the omission of the petitioner to deposit the duty imposed by the order under appeal cannot be a valid ground) for declining to entertain the appeal. The order made by the Collector in that behalf must, therefore, be quashed.

4. No other ground is pressed before me.

5. The petition is allowed accordingly. The order of the Collector Central Excise, Allahabad declining to entertain the petitioner''s appeal is quashed. The Collector will now proceed to dispose of the appeal in accordance with law. In the circumstances of the case, there is no order as to costs.

 