
(2002) 01 DEL CK 0149

In the Delhi High Court

Case No : Civil Writ Petition No. 36 of 2002 and C.M. No. 85 of 2002

U.S. Sitani

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 08-01-2002

Acts Referred:

Citation : (2005) 124 ECR 310 : (2005) 184 ELT 28

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : Madhav Rao and Shiv Ram, for the Appellant; Sanjay Jain, for the Respondent

Judgement

1. This writ petition is directed against an order dated 23rd October, 2001 passed by the Customs, Excise and Gold (Control) Appellate Tribunal in Appeal No. E/1306/2001-NB whereby and whereunder the petitioner has been directed to deposit a sum of Rs. 5 crores towards duty and penalty within 12 weeks from the date of passing of the order. The learned Counsel appearing on behalf of the petitioner has, inter alia, urged that apart from the fact that there has been a gross violation of the principles of natural justice committed by Commissioner of Central Excise, New Delhi the Tribunal failed to consider the fact that the petitioner is not in a position to pay the said amount. Our attention in this connection has been drawn to the certificate granted by the Chartered Accountants on 18th October, 2001 from a perusal whereof it would appear that for the assessment year 1998-99, the petitioner suffered a loss of Rs. 2,24,838/- and for the assessment year 1999-2000 he suffered a loss of Rs. 3,50,412/- and in that situation, in our opinion the learned Tribunal should not have brushed aside these documents and ought to have considered the financial capacity of the petitioner to deposit a sum of Rs. 5 crores in the light of these documents as well. No reason or less any cogent reason has been assigned by the learned Tribunal in rejecting the contention of the petitioner that he is not in a position to pay the aforesaid amount. We are Therefore of the opinion that the impugned

order cannot be sustained which is set aside accordingly and the matter is remitted to the learned Tribunal again for consideration of the matter afresh. The petitioners shall have liberty to adduce to any other or further evidence in support of the petitioner's case that the petitioner should be directed to pre-deposit of remaining amount.

2. CW and CM stand disposed of.