(1991) 03 AHC CK 0041

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 237 of 1991

Vespa Car Co. Ltd. APPELLANT

Vs

Assistant Collector of Central Excise RESPONDENT

Date of Decision : 05-03-1991

Acts Referred:

Citation : (1991) 33 ECC 292 : (1991) 38 ECR 176 : (1992) 61 ELT 16

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

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This writ petition is directed against a proceeding dated 22nd February, 1991 initiated by the Assistant Collector, Central Excise, Central Excise Division, Rai Bareli, whereunder certain goods belonging to the petitioner have been detained in lieu of excise duty demand totaling Rs. 15,64,358.40 P. This amount is made up of 8 items mentioned in the order of detention. The petitioner is challenging the said detention as incompetent and invalid.

2. So far as Items No. 5 and 6 are concerned, it is brought to our notice that the appeals were preferred against these demands along with stay applications and the said stay applications were disposed on 13th February, 1991. Though the stay applications were rejected, the petitioner was granted a month''s time for paying the duty. The month''s time will expire only on 17th March, 1991. It is, therefore, stated that the detention of goods for recovering the said amount of duty under Items No. 5 and 6, is premature.

3. So far as the amounts demanded under Items No. 1 to 4, 7 and 8 are concerned, it is submitted that the appeals are pending against the said demands and that the stay application filed by the petitioner in these appeals have not yet been disposed of. Reliance is placed upon a Circular of the Central Board of Indirect Taxes dated 2nd March, 1990 (Circular No. 7/90-CX-6), wherein it has been directed that it would not be fair and just to proceed with the recovery,

while applications for stay of the impugned order or for waiver of the condition of deposit, are pending before the Appellate Authority. It is, accordingly, submitted that since the said stay applications are pending, the proceeding for recovery of the disputed duty is not warranted.

4. When the matter came up yesterday, we gave lime to the learned Chief Standing Counsel for the Central Government to find out as to whether the stay applications were still pending in the appeals preferred against Items No. 1 to 4, 7 and 8. Today we are told by the learned Chief Standing Counsel that the said applications are still pending. Accordingly, so far as the Items No. 1 to 4, 7 and 8 are concerned, the detention of goods for recovery of the duty in question, is premature, and not fair. Accordingly the order of detention dated 22nd February, 1991 is quashed herewith and the writ petition is allowed with the above observations.

5. It is made clear that this order does not preclude the authorities from proceeding to recover the duty due under the Items No. 5 and 6 after 17th March, 1991, if it is not paid meanwhile or to recover the other amounts in case the stay applications are dismissed.

6. We may not be understood as having expressed any opinion on the correctness or otherwise of the order dated 18th February, 1991 made by the Appellate Authority in the stay applications relating to Items No. 5 and 6.

7. Copy of this order may be given to the parties on payment of usual charges within five days.

