

(1991) 05 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 872 of 1991

Vespa Car Co. Ltd.

APPELLANT

Vs

Assistant Collector of Central Excise

RESPONDENT

Date of Decision : 13-05-1991

Acts Referred:

Citation : (1992) 58 ELT 496

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

Bench : Division Bench

Judgement

B.P. Jeevan Reddy, C.J.—Although the petitioner has challenged two orders of Collector (Appeals) Central Excise, Allahabad dated 18-2-1991 and 10-4-1991 in this writ petition, we are confining this writ petition only to the order dated 10-4-1991.

2. The appellant had filed eight appeals and had filed stay petitions in all the eight of them. Stay petition in two appeals were disposed of by order dated 18-2-1991 and the stay petitions in the remaining six appeals were disposed of by order dated 10-4-1991. A single writ petition against both the said orders is not maintainable. It is for this reason that we are confining this writ petition only to the order dated 10-4-1991.

3. We have perused the impugned order. In our opinion, it does not really come to grip with the facts of the case relevant at this stage. The Appellate Collector says in the first instance that he has perused the judgments cited by the appellant. He then refers to two judgments of the Supreme Court and says that prima facie case, balance of convenience and financial hardship by themselves are not sufficient for grant of stay and that the authorities should take into consideration all the relevant facts and circumstances. Having said so, he says that the facts of this case, examined on the said test, failed to qualify for stay and dismissed the said petition. In our opinion the order of the appellate authority is superficial.

4. We have also heard the learned Standing Counsel for the Central Government, Shri A.K. Gupta.

5. Instead of quashing the said order and remitting the matters for fresh disposal, we think that it would be more appropriate, if we pass final orders in the matter.

6. Accordingly it is directed that pending the said six appeals, mentioned in the order dated 10-4-1991, the operation of the orders under appeal therein are stayed on the condition that the petitioner deposits 1/2 (half) the duty demanded under the said orders under appeal and furnishes security or bank guarantee, as the case may be within two months from this day, for the balance. Furnishing of security or bank guarantee shall be at the option of the petitioner but this bank guarantee or security must be to the satisfaction of the appellate authority. This order shall be effective pending disposal of the said appeals. If the petitioner fails to comply with any of the conditions mentioned above, this order will cease to be operative at the end of two months.

7. For the period of said two months, the auction of the seized vehicles is stayed. If the petitioner complies with this order, they may be released back to him, otherwise they can be proceeded against according to law.

8. The writ petition is disposed of with the aforesaid direction. No costs.