

(1997) 09 AHC CK 0244**Allahabad High Court****Case No:** Civil Misc. Writ Petition No. 526 of 1985

Om Prakash Patel and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Sept. 3, 1997**Citation:** (1998) 74 ECR 497**Hon'ble Judges:** R.K. Gulati, J; Om Prakash, J**Bench:** Division Bench**Final Decision:** Disposed Of**Judgement**

1. This writ petition is filed by several petitioners seeking a writ in the nature of mandamus against the respondents directing them not to demand or realise any amount from the petitioners on account of excise duty on the stocks of tobacco in respect of the crop year 1977-1978, pursuant to the impugned citation.
2. The case of the petitioners is that price offered for the crop was too low for the relevant year and, therefore, they requested the respondents to permit the former to use the tobacco as manure for agriculture purposes. When nothing was heard from the respondents, it is averred that the crop was harvested and used as manure for agricultural purposes.
3. Reliance is placed on instruction 31(f) of the Manual of Departmental Instructions on Tobacco Excise Duty, which states that irrespective of whether a demand for duty has been issued or not (or whether or not a consignment has outlived the maximum period of shortage under Rule 27 or 145) the licensee has the statutory right to claim assessment under item 4-1(7) of the First Schedule to the Central Excises and Salt Act, 1944 (A copy has been filed as annexure A-I). Item 4-1(7) in the schedule shows that if tobacco is used for agricultural purpose, then duty will be nil.
4. It is for this reason that the petitioners claim that the citations issued for realisation of excise duty are not valid.

5. Respondent Nos. 1 to 5 were directed to file a counter affidavit, but no counter affidavit has been filed.

6. Upon hearing the parties, the petition is disposed of finally with the observation that if a representation is made by the petitioners before the Superintendent of Central Excise, Kasganj, Etah (Respondent No. 2) stating all these facts within three weeks from today, then the same will be decided by him by a speaking order within one month from the date of receipt of such representation.

7. Until decision on such representation by Respondent No. 2, no excise duty will be realised pursuant to the impugned citations from the petitioners. If the petitioners fail to take steps as aforesaid, then the stay order will stand vacated.

8. Certified copy of this order be issued to earned Counsel for the parties on payment of usual charges within two days.