

**(1997) 11 AHC CK 0132****Allahabad High Court****Case No:** Civil Misc. Writ Petition No. 721 of 1997

Rosa Sugar Works and Others

APPELLANT

Vs

CC and CE (A) and Others

RESPONDENT

**Date of Decision:** Nov. 20, 1997**Citation:** (1998) 75 ECR 521**Hon'ble Judges:** R.K. Gulati, J; M.C. Agarwal, J**Bench:** Division Bench**Final Decision:** Disposed Of**Judgement**

@JUDGMENTTAG-ORDER

R.K. Gulati, J.

We have heard learned Counsel for the petitioners. No one is present for the respondents despite notice was served.

2. The petitioner No. 1 is engaged in the manufacture of sugar and was subject to certain duties under the Central Excises and Salt Act, 1944. Feeling aggrieved, the petitioners filed two sets of appeals together with stay applications before the first respondent, the Commissioner, Customs and Central Excise (Appeals) Allahabad. The first set of appeal is against four demand orders dated 8.1.1997. That appeal is still pending. It is said that no order on stay application has so far been made. In the second set three demand orders dated 17.4.1997 have been appealed against. This appeal, it is claimed was heard on 6.11.1997 and orders are awaited. The complaint of the petitioners is that pending decision of the aforesaid two appeals, the third respondent-Superintendent, Central Excise, Shahjahanpur has not only attached 566 bags of V.P. sugar belonging to the petitioners but has also taken steps for sale of attached sugar by public auction with a view to realise the demands which are the subject matter of the aforesaid two sets of appeals.

3. The petitioners have sought a writ of mandamus commanding the respondents not to adopt coercive method for realisation of the demand raised under the orders

dated 8.1.1997 and 17.4.1997 passed by the Assistant Commissioner, Central Excise, Sitapur, respondent No. 2 till the decision of the appeals filed by the petitioners are pending before the first respondent, being appeal Nos. 146 of 1997 and 252 of 1997.

4. On these facts, the writ petition is disposed of with the direction that the petitioners may approach the first respondent, the Commissioner, Customs and Central Excise (Appeals), Allahabad, stating therein these and other facts and their grievances along with a certified copy of this order, seeking stay of the recovery proceedings pending decision in the aforesaid two sets of appeals. If such an application is made to the first respondent, the said respondent will proceed to decide the application(s) of the petitioners and will pass appropriate orders thereon expeditiously, as may be warranted in the facts and circumstances of the case and in accordance with law. Until such time the application(s) filed by the petitioners are not decided by the first respondent, further recovery proceedings in pursuance of the attachment and sale proclamation, if any, shall remain suspended and the disputed quantity of sugar may not be put to auction. The petitioners undertake to file appropriate application(s) as aforesaid before the first respondent within ten days from today. However, in case of default, the protection granted under this order shall stand automatically discharged.

5. A certified copy of this order may be supplied to the petitioners within 48 hours on payment of usual charges.