

(1999) 09 AHC CK 0250

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 911 of 1999

Udai Zinc Limited

APPELLANT

Vs

Commissioner of Cus. and C. Ex.

RESPONDENT

Date of Decision: Sept. 29, 1999**Acts Referred:**

- Central Excises and Salt Act, 1944 - Section 35F
- Constitution of India, 1950 - Article 226

Citation: (2000) 120 ELT 295**Hon'ble Judges:** S.R. Alam, J; M.C. Agarwal, J**Bench:** Division Bench**Advocate:** Pankaj Bhatia, for the Appellant; G.R. Gupta, for the Respondent**Final Decision:** Allowed

Judgement

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges an order, dated 21st of May, 1999 passed by the Commissioner, Customs and Central Excise (Appeals), Ghaziabad in exercise of powers under the proviso to Section 35F of the Central Excise Act, 1944 whereby the petitioner's request for dispensing with the condition of pre-deposit of adjudicated dues has been rejected. The said order is stated to have been served on the petitioners on the 10th of August, 1999.

2. We have heard Shri Pankaj Bhatia, learned Counsel for the petitioner and Shri G.R. Gupta, Standing Counsel for the respondents.

3. A sum of Rs. 55,545/- has been levied on the petitioner as excise duty for an alleged wrongful claim of Modvat credit. A sum of Rs. 10,000/- has been levied as penalty. The petitioner has preferred an appeal before the Commissioner against the said levies and applied for dispensing with the condition of pre-deposit of adjudicated dues, as contained in Section 35F of the Act. Copies of the application

preferred by the petitioner in this regard and of the written submissions made therein are Annexures 2 and 3 to the writ petition which show that the petitioner had set up financial hardship as a ground for the said claim. The Commissioner's order shows that he has rejected the claim solely on the ground that he was of the view of that the adjudication was prima facie right. He did not go into the question of financial hardship.

4. The petitioner has a statutory right of appeal and financial hardship is the main cause in almost every case for claiming dispensation of the condition of pre-deposit and it is on financial considerations that the appellate authorities exercise their discretion. Therefore, the omission of the learned Commissioner in not considering the petitioner's claim of financial hardship makes the order bad and the discretion cannot be said to have been exercised properly. The impugned order is, therefore, set aside and the Commissioner is directed to decide the petitioner's application afresh, in accordance with law.

5. The writ petition stands allowed accordingly.