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**(2000) 07 AHC CK 0146**

**Allahabad High Court**

**Case No:** Civil Misc. Writ Petition No. 375 of 2000

Shree Traders

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

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**Date of Decision:** July 13, 2000

**Acts Referred:**

- Income Tax Act, 1961 - Section 33, 35

**Citation:** (2001) 75 ECC 264 : (2000) 92 ECR 452

**Hon'ble Judges:** M. Katju, J; A.K.Yog, J

**Bench:** Division Bench

**Final Decision:** Disposed Of

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### **Judgement**

@JUDGMENTTAG-ORDER

M. Katju, J.

The petitioner is a trader dealing in various metals and metalwares. On 5.3.2000 the truck of the petitioner was seized in district Saharanpur loaded with Copper sheets and circles.

2. The petitioner applied for release of the truck before the Deputy Commissioner, Central Excise vide Annexure A-3 to the writ petition. He sent another reminder. The petitioner thereafter received letter dated 30.3.2000 of the Superintendent, Central Excise Saharanpur stating that the Duty Commissioner has observed that the application for provisional release will be considered after completion of the investigation vide Annexure A-5 to the writ petition.

3. A counter affidavit has been filed in which it has been alleged in paras 6, 8 and 9 that the petitioner transported goods through an unusual route without payment of excise duty. In our opinion the petitioner has an alternative remedy under the Central Excise Act and Rules.

4. u/s 33 the power of adjudication is with the Commissioner and Under Rule 206(3) the goods can be released pending adjudication after furnishing such security as the Commissioner may require. Also u/s 35(2) the petitioner has a remedy to approach the Commissioner against any order of the subordinate authority. Hence the petitioner should avail of the alternative remedies under law, and if he approaches the concerned authority his representation shall be decided preferably within two months thereafter in accordance with law. The petitioner may also approach the Commissioner if his appeal is not being decided, and the Commissioner will do the needful.

5. Petition is finally disposed of with the aforesaid observations.