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(2014) 09 AHC CK 0155

Allahabad High Court

Case No: Writ Tax No. 567 of 2014

Keymen Laminators Pvt. Ltd.		APPELLANT
	Vs	
Customs, Excise and Service Tax		RESPONDENT

Date of Decision: Sept. 15, 2014

Citation: (2014) 309 ELT 597

Hon'ble Judges: Dhananjaya Yeshwant Chandrachud, C.J; Dilip Gupta, J

Bench: Division Bench

Advocate: Pankaj Bhatia and Gopal Verma, Advocate for the Appellant; B.K.S. Raghuvanshi, Advocate for the Respondent

Judgement

@DELETEUPPERDATA

@JUDGMENTTAG-ORDER

1. Following an order of adjudication by the Additional Commissioner, Central Excise, Kanpur on 25 November 2007, dues of Rs. 18,450/- relating to 123 bags of HDPE Granules found short and Rs. 17,90,434/- lacs as payable on excisable goods cleared in a clandestine manner were confirmed. A penalty of Rs. 18.08/- lacs was imposed, besides a personal penalty of Rs. 25,000/- on a Director of the petitioner. The Commissioner (Appeals) partially allowed the appeal of the petitioner by reducing the duty demand of Rs. 17,90,434/- to Rs. 61,947/-. The penalty on the appellant was also reduced to Rs. 80,397/- and the personal penalty on the Director to Rs. 5,000/- respectively. The Tribunal allowed the appeal filed by the Revenue by an order dated 1 January 2014. The petitioner filed a recall application before the Tribunal on 29 January 2014 stating that though the petitioner had no notice of the hearing before the Tribunal, its counsel had identified the appeal from the roster of the Tribunal but was prevented from

reaching on time due to extreme weather conditions. The restoration application is pending. In the meantime, the Assistant Commissioner, Central Excise, Division I Kanpur has, by an order dated 25 August 2014, issued directions for the detention of certain goods of the petitioner for the recovery of the outstanding dues.

2. Learned counsel appearing on behalf of the petitioner submits that the Tribunal may be directed to expedite the recall application and in the meantime the recovery proceedings should be stayed.

3. There can be no objection to a direction that the recall application should be disposed of, one way or the other. However, the petitioner in our view, cannot claim a stay on the recovery proceedings merely because a recall application has been filed. Whether or not, the petitioner was prevented from appearing before the Tribunal for sufficient cause is a matter to be decided by the Tribunal itself and this Court cannot issue any direction as sought. Hence, we only direct, at this stage that the Tribunal may make all endeavours to dispose of the recall application expeditiously and preferably within a period of two months from the receipt of a certified copy of this order. Any recovery made in the meantime, shall necessarily abide by the final result of the proceedings before the Tribunal. This, however, will not prevent the petitioner from applying before the Tribunal for such relief as is considered necessary. The petition is, accordingly, disposed of.