

(2002) 03 DEL CK 0152

Delhi High Court

Case No: CWP No. 915/85

U.K. Paints Industries
and Another

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: March 1, 2002

Citation: (2002) 82 ECC 38 : (2002) 144 ELT 255

Hon'ble Judges: S.B. Sinha, C.J; A.K. Sikri, J

Bench: Division Bench

Advocate: Nem, for the Appellant; Maninder Singh and Nishakant Pandey, for the Respondent

Final Decision: Allowed

Judgement

A.K. Sikri, J.

By way of the present petition, the petitioners have challenged the order dated 22nd February, 1985 passed by the respondent No. 2 refusing the stay of implementation of order dated 3rd July, 1984 of the Collector of Central Excise, New Delhi and not depositing of duty levied upon the petitioners u/s 35F of the Central Excise and Sat Act, 1944. While issuing rule D.B. on 2nd August, 1985 this court noted the question of law relating to jurisdiction, which arose in this case, in the following manner:

"The clearances of the goods on which duty and penalty has been levied pertain to the period prior to the coming into force of Section 35F of the Central Excise and Salt Act, 1944. The condition of pre-deposit of duty and penalty levied during the pendency of the appeal has been provided by Section 35F which came into force on October 11, 1982. The question raised in this petition is whether the right to appeal is to be governed by the law as it existed when the proceedings were initiated, including the deposit of duty demanded or penalty levied, pending the hearing of the appeal. The question is whether the appeal could be rejected for non-payment of the taxes in respect of which the appeal was preferred which payment was made necessary by an amendment in law made after

initiation of the proceedings. This is a substantial question of law relating to jurisdiction. Rule D.B. To be heard along with CWP No. 651/85."

2. The aforesaid question stands decided in favor of the petitioners by the Division Bench of this court in CWP No. 2576/84 entitled Chloride India Ltd. v. Union of India decided on 1st March, 1985 following the decision of the Apex Court in the case of [Hoosein Kasam Dada \(India\) Ltd. Vs. The State of Madhya Pradesh and Others](#), . The Apex Court in this judgment held that right of appeal is a matter of substantive right and not merely a matter of procedure, and this right becomes vested in a party when the proceedings are first initiated in, and before a decision is given by, the inferior Court and such a right cannot be taken away except by express enactment or necessary intendment. That was a case where Section 22(1) of the Central Provinces and Berar Sales Tax Act, 1947, provided that no appeal against an order of assessment should be entertained by the prescribed authority unless it was satisfied that such amount of tax as the appellant might admit to be due from him, had been paid. This Act was amended on the 25th November, 1949 and Section 22(1) as amended provided that no appeal should be admitted by the said authority unless such appeal was accompanied by satisfactory proof of the payment of the tax in respect of which the appeal had been preferred. On the 28th of November, 1947, the appellant submitted a return to the Sales Tax office, who, finding that the turnover exceeded 2 lacs, submitted the case to the Assistant Commissioner, for disposal and the latter made an assessment on the 8th April, 1950. The appellant preferred an appeal on the 10th May, 1950, without depositing the amount of tax in respect of which he had appealed. The Board of Revenue was of opinion that Section 22(1) as amended applied to the case as the assessment was made, and the appeal was preferred, after the amendment came into force, and rejected the appeal. Allowing the appeal, the court held (i) that the appellant had a vested right to appeal when the proceedings were initiated, i.e., in 1947, and his right to appeal was governed by the law as it existed on that date; (ii) that the amendment of 1950 cannot be regarded as a mere alteration in procedure or an alteration regulating the exercise of the right of appeal, but whittled down the right itself, and it had not retrospective effect as the Amendment Act of 1950 did not expressly or by necessary intendment give it retrospective effect, and the appeal could not Therefore be rejected for non-payment of the tax in respect of which the appeal was preferred.

3. Following the aforesaid decision, this writ petition is allowed. The appellate authority is directed to hear the appeal without imposing the condition of pre-deposit of duty and penalty.