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**Kwality Biscuits Ltd. Vs. Asstt. Commr. of Central Excise, Division-i**

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**SooperKanoon Citation : [sooperkanoon.com/377777](http://sooperkanoon.com/377777)**

**Court : Karnataka**

**Decided On : Mar-26-1996**

**Reported in : 2000(123)ELT356(Kar)**

**Judge : G.C. Bharuka, J.**

**Acts : Central Excise Rules, 1944 - Rule 230; [Central Excise Act, 1944](#) - Sections 35 and 35F**

**Appeal No. : Writ Petition No. 6946/1996**

**Appellant : Kwality Biscuits Ltd.**

**Respondent : Asstt. Commr. of Central Excise, Division-i**

**Advocate for Def. : Smt. Shireen Zafrullah, Adv.**

**Advocate for Pet/Ap. : Shri K. P. Jagadeesan, Adv.**

**Judgement :**

ORDER

1. Rule.

Respondents have been duly served. They have not opted to file any statement of objections. Heard the learned Counsel for the parties.

In this case, it is not in dispute that against the order of adjudication passed by the respondent - Assistant Commissioner/Additional Commissioner of Central Excises, the petitioner has preferred an appeal under Section 35 of the Central Excise and Salt Act, 1944 (in short 'the Act') along with an application under the proviso to Section 35F thereof for dispensation of pre-deposit of the disputed excise duty/penalty.

2. Admittedly, both the appeal as also the application for dispensation are still pending disposal. Despite the said facts, the adjudicating authority has undertaken coercive measures under Rule 230 of the Central Excise Rules for realisation of the disputed demands on the ground that the petitioner has failed to obtain stay order from the appellate authority.

It has been stated at the bar that the sole appellate authority is overburdened with pending appeals and applications and is not in a position to expeditiously attend to the same. If it is true, then it is for the Board and the Central Government to attend to the situation by appointing sufficient number of appellate authorities which will serve the interest of the revenue as also the assesseees. Till such a remedial measures are taken, it will be unjust and unreasonable to permit the respondent-adjudicating authorities to continue with their coercive actions initiated to recover the disputed demands.

3. In somewhat similar circumstances, in the case of M/s. Charak Pharmaceuticals v. Union of India - Writ Appeal No. 578 of 1996 D/D 14-2-1996 a Division Bench of this Court had to pass the following order :

'We have heard learned Counsel for the appellant and the learned Counsel for the respondents and in our judgment, it is not permissible for the Assistant Commissioner to commence the recovery proceedings even while the stay application filed by the appellant is pending before respondent No. 2 and is not disposed of. The appellate authority cannot decline to consider the stay application and thereby permitting respondent No. 3 to proceed with the enforcement of the order of adjudication. It is therefore necessary to direct that respondent No. 3 shall not proceed with the recovery in pursuance of the adjudication order as long as respondent No. 2 does not dispose of the stay application.'

Accordingly, the adjudicating authority and its subordinates are restrained from pursuing recovery proceedings in respect of demands which are subject matter of appeal till the application filed by the petitioner under the proviso to Section 35F of the Act is finally disposed of. Goods detained if any, should also be released. But the stay of recovery proceedings and release of the detained goods are subject to the condition that the petitioner furnishes a bond (without bank guarantee) similar to the one prescribed in Form B-13 with appropriate changes befitting the facts of the case, and with a further condition that till the disposal of his application by the appellate authority, the petitioner will not dispose of or in any way further encumber the immovable properties including plant and machinery.

4. Writ Petition is accordingly allowed to the extent as indicated above. No costs.
5. Smt. Shireen Jafrullah, Additional Central Government Standing Counsel is permitted to file her memo of appearance within four weeks from today.