

Heera Electrodes Vs. Superintendent of Central Excise

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SooperKanoon Citation : sooperkanoon.com/469094

Court : Allahabad

Decided On : Nov-22-1985

Reported in : 1986(7)ECC156; 1987(32)ELT647(All)

Judge : A. Benerji and ;G.K. Khanna, JJ.

Acts : [Central Excise Act, 1944](#) - Sections 35B

Appeal No. : Civil Misc. Writ Petition No. 937/85

Appellant : Heera Electrodes

Respondent : Superintendent of Central Excise

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : A.P. Mathur, Adv.

Disposition : Suit dismissed

Judgement :

ORDER

1. We have heard learned counsel for the petitioner and Sri Shishir Kumar, Additional Standing Counsel for the Union of India representing the respondent. For the view that Heera Electrodes, Rampur v. Union of India and Anr. (W.P. No. 818 of 1985) this writ petition must also fail. The prayer made in this writ petition is in the nature of stay of the recovery of the amount of duty, the penalty and

redemption fine against which writ petition No. 818 of 1985 (Heera Electrodes v. Union of India and Anr.) was filed. The petitioner was served with a copy of the impugned order dated 8th October, 1985 on 11th October, 1985. The petitioner has three months' time to file an appeal under Section 35-B of the Central Excises and Salt Act, 1944. The petitioner has yet to file an appeal. He may do so within the time prescribed. We have perused the Circular No. 29 of 1982 which is contained in C.E. and C. Bulletin No. 23, Volume 2 which shows that the recovery proceedings are not to be resorted to for the period of four months from the date of the receipt of the communication. Since the communication of the order took place on the 11th October, 1985 the period of four months runs upto 11th February, 1985. We have no doubt that the respondent will abide by the above circular. The petitioner can pray for stay before the appellate authority and it is not necessary for this court to pass any such order on this writ petition. We have no doubt that the respondent will take up the stay application within a reasonable period of time when the same is filed.

2. With these observations this writ petition is dismissed.