

Luxco Electronics Vs. Union of India (Uoi) and ors.

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Court : Allahabad

Decided On : May-22-1987

Reported in : 1987(31)ELT883(All)

Judge : V.K. Mehrotra and ;D.S. Sinha, JJ.

Appeal No. : Writ Petition

Appellant : Luxco Electronics

Respondent : Union of India (Uoi) and ors.

Judgement :

1. The grievance of the petition in the case is that during the pendency of the appeal before it, the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi has refused to grant stay of recovery of the amount directed to be paid by the petitioner by order of the Collector of Central Excise, Allahabad. The Copy of the order of the Tribunal is Annexure 'A-6' to the petition. The Tribunal has asked the petitioner (Appellant before it) to deposit a sum of Rs. 2,00,000/- in cash and secure the balance of the duty amount (amounting to Rs. 1,37,289/52) by way of Bank Guarantee within a period of six weeks from the date of the order. It has stayed the recovery of the amount of penalty in respect of the appellants.

2. One of the pleas which the appellant had taken before the Tribunal is that the demand was time barred. This ground has specifically been mentioned in the application for stay made by the petitioner before the Tribunal. The Tribunal has

noticed this plea, in its order of April 22, 1987, but has not said anything specifically about it while dealing with the submission made before it. A matter similar to this arose before this. Court earlier also. In *Hari Fertilizers v. Union of India and Ors.*, 1985 (22) Excise Law Times page 301, a Division Bench of this Court in a similar situation took the view that the Tribunal was to deal with the plea about the demand being barred by time, though in a prima facie, manner, in its order on application made by the appellant before it for stay of the realisation of the amount under Challenge. Some other decisions taking similar view were also brought to our notice.

3. Having heard Shri A.P. Mathur for the petitioner and Sri N.B. Singh, Senior Standing Counsel for the Union of India,, we proceed to dispose of the petition finally today, as prayed by them, by quashing the order of the Tribunal and directing to hear the prayer for stay afresh and pass an order in accordance with law. Counsel for the parties will be free to bring to the notice of the Tribunal. All such decisions upon which they wish to rely in this matter. Costs on parties.

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