

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**

**Ramakrishna Sales P. Ltd. Vs. Union of India (Uoi)**

**Ramakrishna Sales P. Ltd. Vs. Union of India (Uoi)**

**SooperKanoon Citation : [sooperkanoon.com/711299](http://sooperkanoon.com/711299)**

**Court : Delhi**

**Decided On : May-27-2005**

**Reported in : 2005(188)ELT16(Del)**

**Judge : Swatanter Kumar and; Madan B. Lokur, JJ.**

**Acts : [Customs Act, 1962](#) - Sections 129(E); [Constitution of India](#) - Article 226**

**Appeal No. : Writ Petition (C) Nos. 9632-9633 of 2005 and C.M. Nos. 7066 (Stay) and 7067 of 2005**

**Appellant : Ramakrishna Sales P. Ltd.**

**Respondent : Union of India (Uoi)**

**Advocate for Def. : Yashraj Deora, Adv.**

**Advocate for Pet/Ap. : H.S. Phoolka, Sr. Adv.,; R.K. Handoo and; Rajat Wadhwa,**

**Disposition : Application dismissed**

**Judgement :**

ORDER

C.M. No. 7067/2005 :

1. Exemption allowed subject to all just exceptions.

C.M. stands disposed of accordingly.

W.P. (C) Nos. 9632-33/2005 9632-33/2005 :

2. Challenge in the present writ petition under Article 226 of the [Constitution of India](#) is to the order dated 15th April, 2005 passed by the Customs Excise and Service Tax Appellate Tribunal, vide which the stay application filed by the Petitioner was disposed of while directing the Petitioner to pay a sum of Rs. 2.5 crores against the demand of Rs. 5.3 crores, against both the Petitioners. The contention raised is that the various grounds which the Petitioner had taken up in the application filed for grant of stay including the financial hardships have not been appropriately considered by the Appellate Tribunal. It is submitted that the goods were cleared in the year 1996-97 and thereafter the business of the Petitioner has practically slopped because of the heavy demand raised by the respondent which is arbitrary. It is also contended that the Petitioner has a good prima facie case and is likely to succeed before the Appellate Tribunal. On the other hand, the learned Counsel appearing for the Respondent states that the demand raised by the Department is relatable to the laws in force and the Petitioner is liable to pay the entire demand of Rs. 5.3 crores. It is further contended that the financial status of the Petitioner is no way a relevant consideration for reducing the amount of Rs. 2.5 crores directed to be paid by the Appellate Tribunal.

3. Having heard the learned Counsel for the parties and keeping in view the fact that the Petitioner had already paid a sum of Rs. 1 crore at the time of release of goods on account of duty payable, the demand of Rs. 5.3 crores has been raised by the Respondents in addition thereto, out of which the Petitioner again has been called upon to deposit a sum of Rs. 2.5 crores. Undisputedly, and as even noticed in the order of the Tribunal, the Petitioner has deposited Rs. 1.5 crores out of the additional demand and prays for relaxation of the condition of stay imposed by the Tribunal. It is true that the duty should be paid by the person who imports goods and particularly when the Respondents claim that he had evaded duty and smuggled the goods. But equally true is that such measure should not be taken in a manner which would render it totally enviable and the Petitioner would practically

have to close his business as this would amount to irreparable loss, as even if the Petitioner succeeds before the Tribunal, he may not be able to revive his business. Thus, we are called upon to balance the equity between the parties.

4. Having considered all these aspects, we are of the view that the Petitioner should be directed to pay an additional sum of Rs. 40 lakhs. If such an amount is deposited or paid, the appeal would be heard on merits and if such an amount is not deposited or paid, the Tribunal will be at liberty to proceed with the matter in accordance with law. Learned Counsel appearing for the Petitioner prays for three months' time to deposit the additional sum of Rs. 40 lakhs and submits that the appeal may not be dismissed for non-compliance of Section 129E of the Customs Act. In the interest of justice, we grant final opportunity to the Petitioner to deposit the additional sum of Rs. 40 lakhs within 8 weeks from today. If the said amount is not deposited within the stipulated time, the Tribunal may pass such orders as it may deem fit and proper. However, till expiry of 8 weeks, appeal would not be dismissed on account of non-compliance of the conditions.

5. The writ petition is disposed of in the above terms, while leaving the parties to bear their own costs.

CM No. 7066/2005 (Stay):

6. In view of the above order, application has been rendered infructuous and the same is dismissed accordingly.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**