

Cont.Case(C)[SH]33/2012

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

22-05-2013

None appears for the petitioner.

List this case on 28-5-2013.

JUDGE

S.Rynjah

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

22-05-2013

Heard Mr AH Hazarika, learned counsel appearing for the petitioner.

Admit this revision petition.

Call for record.

Issue notice to respondent within four weeks.

Steps by Registered Post with AD within five days.

List this case on 19-6-2013.

JUDGE

S.Rynjah

CRP[SH]19/2013

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

22-05-2013

Perused the office note dated 3-5-2013, the Registry is directed to send reminder to the Court below for sending the record promptly.

List this case on 12-6-2013.

JUDGE

S.Rynjah

WP(C)[SH]14/2013

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

22-05-2013

As prayed for by Mr. SC Shyam, learned CGC, further six weeks time is granted as a last chance for filing affidavit-in-opposition.

List this case on 3-7-2013

JUDGE

S.Rynjah

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

22-05-2013

Office note dated 8-5-13 indicates that the parties had been informed that the present writ petition had been transferred from the Armed Forces Tribunal, Regional Bench, Guwahati to this Court.

None appears for the petitioner without showing any cause.

Mr. SC Shyam, learned CGC, entered appearance on behalf of respondent.

List this case on 12-6-2013.

JUDGE

S.Rynjah

WP(C)[SH]82/2013

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

22-05-2013

As prayed for by Mr.K Khan, learned Addl. Sr.GA for the respondent, further four weeks time is granted for filing affidavit-in-opposition.

List this case on 19-6-2013.

JUDGE

S.Rynjah

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

22-05-2013

Heard Mr. AK Purkayastha, learned counsel appearing for the petitioner and Mrs. T.Yangi, learned counsel appearing for the respondent.

It had been alleged in the present writ petition that the petitioner had filed a statutory appeal under Section 35 of the Central Excise Act 1944 against the order of the learned Commissioner, Central Excise, Shillong dated 31-3-2011 passed in the Order-in-Original/CCE/SHILLONG No.02/2011 filed before the Central Excise & Service Tax Appellate Tribunal, Eastern Zonal Bench at Kolkata and that appeal is not taken up for the reasons alleged in the present writ petition for hearing. However, this Court is not making any comments to the allegations made by the petitioner in the present writ petition for the lapse on the part of the learned Tribunal to take up the said Appeal.

It is also stated that the said appeal filed by the petitioner under Section 35 of the Central Excise Act, 1944 was also accompanied with an application for stay. However, the petitioner cannot move the said stay application because of the non-availability of the Division Bench of the said learned Tribunal at Kolkata.

While the said appeal is pending before the learned Tribunal, the respondent had taken up actions for recovery of dues and penalty pursuant to the said order dated 31-3-2011 passed by the learned Commissioner, Central Excise, Shillong.

Mr AK Purkayastha, learned counsel appearing for the petitioner by referring an order of the Division Bench of the

Gauhati High Court dated 13-2-2013 passed in WP(C)No.678/2013 contended that in a writ petition similar with the present writ petition, the court had already directed the said respondent not to take up coercive actions for recovery of the dues and penalty. For easy reference, the Judgment and Order of the Gauhati High Court dated 13-2-2013 is reproduced herein below:-

“Judgment Date: 13/02/2013

Case No: WP(C) 678/2013

BEFORE

HON’BLE THE CHIEF JUSTICE MR.A.K.GOEL

HON’BLE MR. JUSTICE A.K.GOSWAMI

(A.K.Goel, C.J.)

Grievance in this petition is that appeal of the petitioner before the Custom, Excise and Service Tax Appellate Tribunal, Kolkata under Section 35 of the Central Excise Act, 1994 and stay application along with the said appeal is not been taken up on account of non-availability of the Division Bench of the Tribunal and in the meanwhile the demand of excise duties is being enforced. Since there is a statutory remedy of appeal, the said provision cannot be rendered futile by recovery till hearing of stay application by Tribunal when the petitioner has already taken necessary steps and delay in hearing is for reasons beyond the control of the petitioner. The petitioner being Central Govt. undertaking has no intention to avoid payment and bonafide intention is to avail statutory remedy.

Having regard to the facts and circumstances of the case, we direct that demand against the petitioner may not be enforced till orders are passed by the Tribunal on the stay application. Such orders may be passed by the Tribunal as early as possible.

The writ petition is disposed of accordingly”.

On consideration of the submission of the learned counsel appearing for the parties and also pendency of the stay application filed by the present writ petitioner before the learned Tribunal, Eastern Zonal Bench at Kolkata, this Court is of the considered view that an interim order is called for. In the interim, it is provided that the respondents shall not enforce the

said order dated 31-3-2011 passed in Order-in-Original/CCE/SHILLONG till the said stay matter is disposed of by the learned Tribunal.

However, the parties are directed to apprise this Court regarding any orders passed by the learned Tribunal in the said matter.

List this case on 18-7-2013.

JUDGE

S.Rynjah

WP(C)[SH]156/2012

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

22-05-2013

As prayed for by Mr. SC Shyam, learned CGC appearing for respondent No.1 - 4, further four weeks time is granted for filing affidavit-in-opposition.

List this case on 19-6-2013.

JUDGE

S.Rynjah

WP(C)[SH]235/2012

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

22-05-2013

Issue Rule.

Exchange of pleadings is complete.

List this case for final hearing on 19-6-2013.

JUDGE

S.Rynjah

WP(C)[SH]298/2012

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

22-05-2013

The respondents filed their affidavit-in-opposition.

Exchange of pleadings is complete.

List this case for final hearing on 19-6-2013.

JUDGE

S.Rynjah

WP(C)[SH]327/2012

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

22-05-2013

As prayed for by the learned counsel for the respondent
No.5, list this case on 24-5-2013.

JUDGE

S.Rynjah

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

22-05-2013

None appears for the petitioner.

Mr.Gurung, learned counsel entered appearance on behalf of respondent No.7 and prays for three weeks time for filing affidavit-in-opposition.

Learned GA, appearing for respondents No. 1 – 6 also prays for three weeks time for filing affidavit-in-opposition.

The prayer is granted.

List this case on 12-6-2013.

JUDGE

S.Rynjah