

**M.i. Metal Sections Pvt. Ltd. Vs. Collector of C. Excise, Bangalore**

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**SooperKanoon Citation :** [sooperkanoon.com/375265](http://sooperkanoon.com/375265)

**Court :** Karnataka

**Decided On :** Oct-28-1994

**Reported in :** 1994(48)ECC165; 1995(75)ELT470(Kar); ILR1994KAR3242; 1994(5)KarLJ228

**Judge :** G.T. Nanavati, C.J. and;N.D.V. Bhat, J.

**Appeal No. :** Writ Appeal No. 2198/1994

**Appellant :** M.i. Metal Sections Pvt. Ltd.

**Respondent :** Collector of C. Excise, Bangalore

**Advocate for Def. :** Shri Ashok Haranahalli, Adv.

**Advocate for Pet/Ap. :** M/s G. Chander Kumar and ;Rajesh Chander Kumar, Adv.

**Judgement :**

G.T. Nanavati, C.J.

1. The appellant filed a petition under Article 226 of the Constitution challenging the order passed by the Customs, Excise and Gold (Control) Appellate Tribunal, which directed the appellant to pre-deposit Rs. 25,00,000/- as against the excise duty and penalty liability of Rs. 82,30,908.62 as a condition precedent to the hearing of its appeal. The learned Single Judge who heard it dismissed the same

on the ground that the discretion exercised by the Tribunal did not call for any interference.

2. What is submitted by the learned counsel for the appellant is that in view of subsequent decision of the Tribunal and because the Tribunal has not properly considered the aspect of financial hardship to the appellant, this court should interfere with the said order. If as a result of subsequent decision of the Tribunal any change in the correct legal position has been brought about, then the appellant can move the Tribunal for modification of the impugned order passed by the Tribunal. So far as the aspect of financial hardship is concerned, in our opinion it cannot be said that the Tribunal has not properly applied its mind to that aspect. Merely because there is no elaborate discussion and detailed reasons are not given, it cannot be said that the order passed by the Tribunal is not legal and proper. This appeal therefore deserves to be dismissed.

3. We would however like to observe that it will not be proper for the Tribunal to dismiss the appellant's appeal mechanically merely because the appellant has failed to comply with the condition of pre-deposit imposed by it. When the appeal would be listed again for hearing, it would be open to the appellant to move the Tribunal even at that stage to raise a plea that it could not comply with the order passed by the Tribunal because of financial difficulties and circumstances beyond its control. If such a plea is raised, then the Tribunal shall have to consider it on its own merits. If the Tribunal accepts the plea, then the appeal will have to be heard on merits. But if no such plea is raised or it is not accepted by the Tribunal then it will be open to the Tribunal to pass the consequential order of dismissal of appeal on the ground that the appellant has not complied with the condition imposed upon by it.

4. With the aforesaid observations this appeal is dismissed.