

**Kamal Bidi Factory Vs. Cegat**

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**SooperKanoon Citation :** [sooperkanoon.com/472237](http://sooperkanoon.com/472237)

**Court :** Allahabad

**Decided On :** Sep-14-1992

**Reported in :** 1994LC291(Allahabad); 1993(64)ELT387(All)

**Judge :** M. Katju, J.

**Acts :** [Constitution of India](#) - Article 14; [Central Excise Act, 1944](#) - Sections 35F

**Appeal No. :** Civil Misc. Writ Petition No. 943 of 1992

**Appellant :** Kamal Bidi Factory

**Respondent :** Cegat

**Disposition :** Petition allowed

**Judgement :**

1. This writ petition has been filed against the impugned order of the Customs, Excise & Gold (Control) Appellate Tribunal dated 5-6-1992 (Annexure 38 to the writ petition.

2. This order has been passed by the Tribunal on the petitioner's application under Section 35F to deposit duty and penalty.

3. I have perused the said order in detail. Although the petitioner had pleaded that in view of his financial difficulty, he was unable to deposit the duty and penalty levied by the Collector this aspect has not been considered by the Tribunal in the impugned order. In my opinion whenever an application for waiver or stay is made before the appellate authority in a tax case one of the relevant considerations is the financial position of the appellant. If the appellant is not able to pay tax or penalty imposed or is able to pay only a part of it in view of his financial difficulty, it is wholly unreasonable and arbitrary to demand the full tax or penalty levied, which in fact amounts to denying him an appellate hearing because he may be financially unable to deposit the said amount. If this view is not taken then the provision for appeal will in fact violate Article 14 of the Constitution. In my opinion the appellate authority cannot act arbitrarily in the matter of waiver or stay and it must consider the financial capacity of the appellant which is a very relevant consideration. Since this was not done, I quash the impugned order dated 5-6-1992/11-6-1992 and direct the Tribunal to reconsider the matter and look into the financial position of the appellant and then pass fresh orders on the application for waiver or stay. The petitioner may give all the materials before the Tribunal to show its financial position and may make a fresh application in this regard.

4. The writ petition is allowed. No order as to costs.

A copy of this order may be given to learned counsel for the parties on payment of usual charges by tomorrow.

