

**N.K. Razack Vs. Cegat**

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**Court :** Kerala

**Decided On :** Sep-26-1989

**Reported in :** 1989(25)LC539(Kerala); 1990(45)ELT223(Ker)

**Judge :** Chettur Sankaran Nair, J.

**Appeal No. :** O.P. No. 7913 of 1989-P

**Appellant :** N.K. Razack

**Respondent :** Cegat

**Advocate for Def. :** P.V. Madhavan Nambiar, Adv.

**Advocate for Pet/Ap. :** S. Parameswaran, Adv.

**Judgement :**

**Chettur Sankaran Nair, J.**

1. Petitioner seeks to quash Ext. P7 order of the Customs, Excise & Gold (Control) Appellate Tribunal, Madras, ordering stay on deposit of Rs. 50,000/-against the demand. According to Counsel, petitioner is in financial difficulties and he is not in a position to make the pre-deposit. Insistence on pre-deposit would make the appellate remedy illusory, submits counsel. The question for consideration is whether the Appellate Tribunal has exercised its discretion properly with reference to material considerations. The demand was for a sum of Rs. 2,06,479.20 by way

of duty and Rs. 75,000/- and Rs. 10,000/- respectively as penalty. Against the total of Rs. 2,91,479.20, the Tribunal ordered deposit of a 5th of it. Tribunal also took into account the difficulties pleaded by petitioner and noted that the fixed assets of petitioner were worth Rs. 5,17,031/- against a liability of Rs. 2,10,185.60. I am not inclined to think that there was no application of mind to relevant facts or that the discretion exercised is vitiated by errors apparent on the face of record. In the circumstances, the order is not liable to be interfered with. The last day for payment of amount is 28-9-1989. However, in view of the supervening events stated by counsel for petitioner and the difficulty in raising the amount at short notice, a further time of three months is granted for making the deposit.

2. There is a further grievance that Ext. P6 has not been considered. Petitioner made a request to send a sample of the tread rubber for chemical analysis to determine the proportion of rubber content. This would indeed be a relevant factor in determining the material questions raised in the proceedings. Tribunal should take up Ext. P6, hear petitioner on merits and pass appropriate orders thereon untrammelled by the observation in para 4 of its order, Ext. P7.

With the aforesaid directions, writ petition is disposed of.

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