

**(2000) 10 P&H CK 0144**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.W.P. No. 15519 of 1999

M.M. Dyeing and Finishing Mills  
Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

**Date of Decision:** Oct. 11, 2000

**Acts Referred:**

- Central Excises and Salt Act, 1944 - Section 35F, 35K
- Constitution of India, 1950 - Article 226

**Citation:** (2001) 73 ECC 670 : (2002) 141 ELT 342

**Hon'ble Judges:** Nirmal Singh, J; G.S. Singhvi, J

**Bench:** Division Bench

**Advocate:** Jagmohan Bansal, for the Appellant; Rajesh Gumber, for the Respondent

**Final Decision:** Allowed

**Judgement**

@JUDGMENTTAG-ORDER

G.S. Singhvi, J.

This is a petition for quashing of the order dated 5-10-1999 passed by the Custom, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short the Tribunal) vide which the petitioner has been directed to deposit Rs. 10 lacs as a condition for waiver of requirement of pre-deposit of the duty imposed by the Commissioner, Central Excise, Chandigarh and stay on the recovery of the balance amount.

2. In the writ petition, it has been averred that while determining the issue relating to the financial status of the petitioner, the Tribunal has misread the balance-sheet produced at the time of hearing. According to the petitioner the net profit indicated in the balance-sheet was Rs. 34 thousand and not Rs. 41 lacs as mentioned in the order. The respondents have sought dismissal of the writ petition by contending that no petition lies against an interlocutory order.

3. At the hearing, learned Counsel produced a copy of the audited balance sheet of the petitioner to show that the total profits earned by the petitioner during the year ending 31-3-1999 is 34 thousands and not Rs. 41 lacs as mentioned in the impugned order and submitted that even in the unaudited balance sheets, which had been produced before the Tribunal, the same amount had been indicated as the total profit earned by the petitioner. According to him, the mistake committed by the Tribunal imposing the condition of Rs. 10 lacs for hearing of the appeal is apparent on the face of the order and, therefore, a writ of certiorari be issued for quashing of the same with the direction to the Tribunal to hear the appeal on merits.

4. Learned Counsel for the respondents could not advance any convincing argument to controvert the submission of the learned Counsel. Rather, he had to admit that the balance sheet of the petitioner reflected that it had earned profit of Rs. 34,000/- during the year ending on 31-3-1999.

5. In view of the above, we allow the writ petition and quash the order dated 5-10-1999 passed by the Tribunal and remit the case to it for fresh decision of the petitioner's application for stay. It is hoped that the Tribunal will decide the petitioner's application afresh within 3 months from the date of submission of the certified copy of this order.