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* IN THE HIGH COURT OF DELHI AT NEW DELHI
% *Order reserved on: 03.09.2026*
Order pronounced on: 16.09.2026
Order uploaded on: 16.09.2026

\+ W.P.(C) 3002/2021

SINDER PAL S/O LATE SH. RAM SARUP ......Petitioner

Through: Mr. Akhil Krishan Maggu, Mr.Vikas Sareen, Ms. Oshin Maggu, Mr. Aryan Nagpal, Ms. Palak Sarna, Advs.

versus

COMMISSIONER OF CUSTOMS, INLAND CONTAINER DEPOT, PATPARGANJ, NEW DELHI & ANR....Respondents

Through: Mr. Harpreet Singh, SSC with Mr. Iqbal Singh Bedi, Ms. Suhani Mathur and Mr. Jatin Kumar Gaur, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

O R D E R

ANIL KSHETARPAL, J.:

1. The issue which arises for consideration in the present Petition is whether this Court, in exercise of its extraordinary and discretionary jurisdiction under Articles 226 and 227 of the Constitution of India, ought to examine the Petitioner’s challenge to the Order-in-Original dated 26.03.2018 and Order-in-Appeal dated 10.12.2020 dismissing the Petitioner’s Appeal for failure to make the mandatory pre-deposit, when the Petitioner has an efficacious statutory appellate remedy before the Appellate Tribunal under Section 129A of the Customs Act, 1962 [hereinafter referred to as ‘the Act’].

2. Through the present Petition, the Petitioner seeks quashing of Order-in-Original No. 115/ADC/ICD/PPG/2018 dated 26.03.2018 passed by the Additional Commissioner of Customs, Inland Container Depot, Patparganj, New Delhi [hereinafter referred to as 'Order-in-Original'], whereby, *inter alia*, a penalty of Rs.3,00,00,000/- was imposed upon the Petitioner under Section 114 of the Act. The Petitioner also seeks a direction for permitting cross-examination of certain persons whose statements were relied upon by the adjudicating authority. The Petitioner further challenges the Order-in-Appeal dated 10.12.2020, whereby the appeal preferred by him under Section 128 of the Act was rejected for non-compliance with the statutory requirement of pre-deposit.

FACTUAL MATRIX:

3. The controversy arises out of an investigation conducted by the Directorate of Revenue Intelligence [hereinafter referred to as 'DRI'] concerning an alleged attempt to export red sanders wood in the guise of carpets. On 14.11.2014, the DRI intercepted a container bearing No. CRXU3319411, which had been loaded on truck bearing registration No. HR-55F-5525 at the Inland Container Depot, Tughlakabad, New Delhi. The container was covered by Shipping Bill No. 5994448 dated 11.11.2014, under which carpets were declared for export.

4. Upon examination of the container, 142 logs of red sanders wood, weighing approximately 4.43 MT, were allegedly recovered concealed beneath carpets. The red sanders wood had not been

declared in the shipping bill. The goods were consequently seized under the Act.

5. During the course of the investigation, the DRI also searched premises situated at Gannaur, Haryana, which were allegedly being used in connection with the export operation. During the search, red sanders wood, carpets and a truck were also seized. Statements of various persons, including Sukhwinder Singh, Gurpreet Singh and Chandeep Singh, were recorded under Section 108 of the Act. The investigation also resulted in the recording of the Petitioner's statement on 14.03.2015.

6. The Petitioner was thereafter issued a Show Cause Notice dated 11.05.2015, proposing, *inter alia*, imposition of penalty upon him under Section 114 of the Act. The Petitioner contested the allegations. In the course of the adjudication proceedings, he disputed his alleged connection with the exporter and the impugned export transaction. He also questioned the reliance placed upon the statements of Sukhwinder Singh, Gurpreet Singh and Chandeep Singh and sought an opportunity to cross-examine them.

7. The adjudicating authority, however, proceeded to adjudicate the Show Cause Notice and passed the Order-in-Original dated 26.03.2018. In the Order-in-Original, the adjudicating authority, *inter alia*, relied upon the statements of the aforesaid persons as well as the statement of the Petitioner recorded under Section 108 of the Act. The adjudicating authority also considered the Petitioner's contention regarding cross-examination. It observed, *inter alia*, that the

Petitioner, in his statement dated 14.03.2015, had himself accepted various allegations and the contents of the statements and other material relied upon in the Show Cause Notice.

8. The adjudicating authority ultimately concluded that the Petitioner had, by his acts and omissions, rendered himself liable to penalty under Section 114 of the Act and imposed upon him a penalty of Rs.3,00,00,000/-. Aggrieved by the Order-in-Original, the Petitioner preferred an appeal under Section 128 of the Act before the Commissioner (Appeals). Along with the appeal, the Petitioner sought waiver of the requirement of pre-deposit.

9. The Commissioner (Appeals), after examining the appeal, noticed that the Petitioner had not deposited the requisite 7.5% of the penalty in terms of Section 129E of the Act. A personal hearing was also afforded to the Petitioner. During the hearing, learned counsel appearing for the Petitioner stated that the requisite deposit had not been made and that an application had been filed seeking waiver thereof.

10. By Order-in-Appeal dated 10.12.2020, the Commissioner (Appeals) held that the deposit contemplated under Section 129E of the Act was a statutory requirement and, in the absence of such deposit, the appeal could not be entertained. The appeal was consequently rejected without examination of the merits of the challenge to the Order-in-Original.

11. The Petitioner has thereafter approached this Court by way of the present Petition under Articles 226 and 227 of the Constitution of

India.

CONTENTIONS OF THE PARTIES:

12. Contentions on behalf of the Petitioner:

12.1. It was submitted that the Order-in-Original is vitiated by a fundamental breach of principles of natural justice. It was submitted that the entire case against the Petitioner is substantially founded upon the statements of Sukhwinder Singh, Gurpreet Singh and Chandeep Singh, but the Petitioner was not afforded an opportunity to cross-examine these persons.

12.2. It was further submitted that Section 138B of the Act contemplates the circumstances in which statements recorded during an inquiry or investigation may be relied upon in adjudication proceedings and that the statements relied upon against the Petitioner could not have been treated as substantive evidence without the makers thereof being examined and made available for cross-examination.

12.3. It was further submitted that the Petitioner's own statement dated 14.03.2015 was recorded while he was in custody and was subsequently retracted before the competent court. According to the Petitioner, the adjudicating authority failed to properly appreciate the effect of such retraction.

12.4. It was also contended that there is no independent evidence establishing that the Petitioner was the real owner or mastermind of the exporter or that he had any concern with the export transaction.

According to the Petitioner, the findings against him are founded principally upon statements of co-noticees, whose veracity was never tested by cross-examination.

12.5. The Petitioner has also questioned the confiscation of the red sanders wood allegedly recovered from the Gannaur premises, contending that the said goods were recovered beyond the customs area and could not have been confiscated under Section 113 of the Act. The consequential penalty imposed upon the Petitioner is also assailed on this basis.

12.6. It was lastly submitted that the statutory requirement of pre-deposit of 7.5% of the penalty causes grave hardship to the Petitioner. According to the Petitioner, he does not have the financial means to make the requisite deposit and, therefore, the dismissal of his statutory appeal without examination of the merits amounts to denial of justice.

13. <u>Contentions on behalf of the Respondents</u>

13.1. *Per contra*, learned counsel for the Respondents opposed the maintainability of the present Petition in view of the efficacious alternative statutory remedy available to the Petitioner under the Act. It was submitted that the Petitioner's appeal against the Order-in-Original was rejected by the Commissioner (Appeals) solely on account of his failure to comply with the mandatory requirement of pre-deposit under Section 129E of the Act.

13.2. It was submitted that the requirement of pre-deposit of 7.5% of the disputed penalty is statutory and mandatory. The Commissioner

(Appeals) has no jurisdiction to waive the said requirement. The Petitioner, therefore, cannot bypass the statutory scheme merely on the ground that he is unable to make the requisite pre-deposit.

13.3. It was further submitted that the Petitioner has an alternative remedy of approaching the Customs, Excise and Service Tax Appellate Tribunal [hereinafter referred to as 'CESTAT'] against the order passed by the Commissioner (Appeals). It was contended that this Court ought not to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India when the Act provides a complete mechanism for redressal of the Petitioner's grievances.

13.4. On merits, it was submitted that the investigation revealed the Petitioner's involvement in the attempted clandestine export of red sanders wood. The statements of Sukhwinder Singh, Gurpreet Singh and Chandeep Singh, according to the Respondents, corroborate each other and establish the Petitioner's connection with the seized goods and the alleged export transaction.

13.5. It was further submitted that the Petitioner is not entitled to claim cross-examination as a matter of right in every adjudication proceeding. According to the Respondents, cross-examination is required to be permitted only where the circumstances so warrant and where specific reasons justifying such examination are made out. It was submitted that, in the facts of the present case, the adjudicating authority had rightly declined the request for cross-examination.

13.6. It was further submitted that the findings recorded in the Order-in-Original are based not merely upon the statements recorded during the investigation, but also upon the recoveries effected during the investigation and other material available on record. It was contended that the statements relied upon in the adjudication proceedings corroborate the recoveries and other circumstances brought on record.

13.7. It was therefore, submitted that the Petitioner cannot invoke the extraordinary jurisdiction of this Court for examination of the merits of the Order-in-Original while bypassing the statutory appellate mechanism.

ANALYSIS & FINDINGS:

14. This Court has carefully considered the submissions advanced on behalf of the parties and perused the material on record.

15. At the outset, it is necessary to delineate the scope of the controversy which falls for consideration before this Court. The Order-in-Original dated 26.03.2018, whereby a penalty of Rs.3,00,00,000/- has been imposed upon the Petitioner under Section 114 of the Act, was admittedly assailed by the Petitioner before the Commissioner (Appeals) under Section 128 of the Act. However, the appeal was not examined on merits. The Commissioner (Appeals), by the Order-in-Appeal dated 10.12.2020, rejected the appeal on account of the Petitioner's failure to comply with the statutory requirement of pre-deposit contained in Section 129E of the Act.

16. The Act is a complete code insofar as the adjudication of disputes arising thereunder and the remedies available against orders passed by the statutory authorities are concerned. An order passed by

an adjudicating authority is appealable before the Commissioner (Appeals) under Section 128 of the Act. A further statutory remedy is also available before the Appellate Tribunal against the orders specified under the Act.

17. It is equally well settled that the existence of an alternative remedy does not operate as an absolute bar on the exercise of jurisdiction under Article 226 of the Constitution of India. The jurisdiction of the High Court under Article 226 is undoubtedly wide. However, where the statute provides an efficacious mechanism for redressal of grievances, the writ jurisdiction is ordinarily not exercised so as to bypass the statutory framework, particularly where the controversy involves examination of disputed questions of fact or merits which fall within the domain of the statutory appellate authorities.

18. In the present case, the Petitioner seeks to assail the Order-in-Original on several grounds, including the alleged denial of an opportunity to cross-examine certain persons, the evidentiary value of the statements recorded under Section 108 of the Act, the effect of the alleged retraction of the Petitioner's statement, the absence of independent material establishing the Petitioner's involvement and the legality of the confiscation of certain goods.

19. Evidently, all these questions relate to the correctness and legality of the findings recorded by the adjudicating authority in the Order-in-Original. The examination of such issues would necessarily require consideration of the material relied upon in the Show Cause

Notice, the statements recorded during the investigation, the findings returned by the adjudicating authority and the submissions of the parties on the merits of the allegations. These are precisely matters which fall for examination before the statutory appellate forum.

20. The Petitioner did, in fact, avail the first statutory remedy by filing an appeal before the Commissioner (Appeals). However, the appeal could not be entertained on merits because of the Petitioner’s failure to comply with the requirement of pre-deposit prescribed under Section 129E of the Act.

21. Section 129E of the Act makes the deposit of the prescribed percentage of the duty or penalty in dispute a condition for entertaining an appeal. The Commissioner (Appeals), therefore, could not have proceeded to examine the merits of the appeal in the absence of compliance with the statutory requirement.

22. The Petitioner has sought to justify non-compliance with the requirement of pre-deposit of 7.5% of the penalty amount on the ground of financial hardship. However, once the legislature has prescribed a statutory condition for the entertainment of an appeal, the same cannot ordinarily be bypassed merely by invoking the extraordinary jurisdiction of this Court.

23. Significantly, the present case is not one where the Petitioner has been denied access to the statutory remedy without any fault on his part. The Petitioner’s appeal was not rejected on merits. Rather, it was rejected because the Petitioner admittedly did not fulfil the statutory condition required for entertaining the appeal.

24. The Petitioner cannot, therefore, be permitted to circumvent the statutory appellate mechanism and invite this Court to undertake, in the first instance, an examination of the merits of the Order-in-Original. To do so would effectively enable the Petitioner to bypass the statutory conditions subject to which the appellate remedy under the Act has been made available.

25. The Petitioner has also contended that the denial of cross-examination constitutes a violation of the principles of natural justice. However, the mere assertion of violation of the principles of natural justice does not, by itself, require this Court to entertain a writ petition notwithstanding the availability of an efficacious statutory remedy. Whether, in the facts and circumstances of the present case, the Petitioner was entitled to cross-examine the persons whose statements were relied upon, and what would be the consequence of the alleged denial thereof, are matters which are intrinsically connected with the merits of the adjudication and are required to be considered by the competent statutory forum.

26. This Court, therefore, does not consider it appropriate to express any opinion on the merits of the Petitioner's contentions regarding the alleged denial of cross-examination, the evidentiary value of the statements recorded during the investigation, the alleged retraction of the Petitioner's statement or the legality of the findings recorded in the Order-in-Original. Any observation by this Court on such issues may prejudice the consideration of the matter by the competent statutory forum.

27. In the considered opinion of this Court, no exceptional circumstance has been demonstrated which would warrant the exercise of extraordinary jurisdiction under Article 226 of the Constitution of India for bypassing the statutory mechanism provided under the Act. The Petitioner must, therefore, pursue the remedies available to him in accordance with law before the competent statutory authority/forum.

CONCLUSION:

28. Accordingly, the present Petition is dismissed on the ground of availability of an efficacious alternate statutory remedy, without expressing any opinion on the merits of the Petitioner's challenge to the Order-in-Original dated 26.03.2018 or the Order-in-Appeal dated 10.12.2020.

29. The Petitioner shall, however, be at liberty to avail of the statutory remedy available to him before the competent appellate forum under the Customs Act, 1962, in accordance with law.

30. It is clarified that all questions raised by the Petitioner in the present Petition, including those relating to cross-examination, reliance upon statements recorded under Section 108 of the Act, the alleged retraction of the Petitioner's statement, applicability of Section 138B of the Act, confiscability of the goods, and the legality and quantum of penalty, are left open to be urged before the competent appellate forum. The said forum shall consider the matter independently and in accordance with law, without being influenced by any observation contained in the present order.

31. The present order shall not be construed as an expression of opinion on the merits of the controversy.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

SEPTEMBER 16, 2026
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