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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 28th August, 2025

+ CUSAA 121/2025 & CM APPL. 53805/2025

M/S TECMAX ELECTRONICS

.....Appellant

Through: Ms. Vidushi Shubham & Mr. Mayank
Sharma, Advs. (9718900060)

versus

THE PRINCIPAL COMMISSIONER OF CUSTOMS
(IMPORT)

.....Respondent

Through: Mr. Shubham Tyagi, SSC, CBIC with
Ms. Navruti Ojha, Mr. Rishabh
Chauhan & Mr. Harish Saini, Advs.
(9650049869)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh J.

1. This hearing has been done through hybrid mode.
2. This is an appeal under Section 130 of the Customs Act, 1962, *inter alia*, challenging the impugned order dated 7th January, 2025 passed by the Central Excise and Service Tax Appellate Tribunal (hereinafter “CESTAT”) by which the appeal of the Appellant has been rejected on the ground that the pre-deposit has not been made by the Appellant.

Factual Background

3. The brief facts of the case are that during the relevant period between 2017 and 2018 the Petitioner had filed seven Bills of Entry for import of LED TVs and three Bills of Entry for import of brass ceramic cartridges. It is stated



that the said Bills of Entry were assessed and cleared by the Customs Department. However, in respect of another Bill of Entry 3rd May, 2018 importing LED TV, the Petitioner is stated to have inadvertently classified the same as spare parts. The same were reassessed and pursuant to the same investigation was conducted on the ground of under-valuation and under-declaration of the imported goods.

4. In respect of the said investigation a Show Cause Notice dated 4th October, 2022 was issued to the Petitioner and pursuant to the same the Order-in-Original came to be passed on 29th September, 2023. *Vide* the said order the Department has rejected the declared value of the imported goods, raised differential duty and imposed penalty on the Petitioner. The relevant portion of the said order reads as under:

“ORDER

(i) I reject the declared Value of Rs.3,80,57,935/- (Rupees Three Crore Eighty Lakh Fifty Seven Thousand Nine Hundred and Thirty Five only) in the said 10 (7+3) Bills of Entry, as mentioned in Annexure-A and B to the SCN, under Rule 12(1) of the CVR, 2007 and re-determined the assessable value as Rs.10,85,27,483/- (Rupees Ten Lakh Eighty Five Thousand Twenty Seven Thousand Four Hundred and Eighty Three only) under Rule 5 of CVR, 2007 read with Section 14 of the Act;

(ii) I determine the differential duty amounting to Rs.3,18,48,890/- (Rupees Three Crores Eighteen Lakhs Forty Eight Thousand Eight Hundred and Ninety only), as detailed in Annexure-A and Annexure-B of the SCN, under Section 28(8) of the Customs Act, 1962 and the same is recoverable from M/s Tecmax Electronic along with applicable interest thereon under Section 28AA of the Customs Act,



1962.

(iii) *I imposed Penalty of Rs.3,18,48,890/- (Rupees Three Crores Eighteen Lakhs Forty Eight Thousand Eight Hundred and Ninety only), upon M/s Tecmax Electronic under Sections 114A of the Customs Act. 1962 as explained in para 5.9.4 above. The Noticee will be entitled to get the benefit of reduced penalty as provided in Section 114A of Customs Act, 1962;*

(iv) *I imposed Penalty of Rs, 70,00,000/- (Rupees Seventy Lakhs only), upon M/s Tecmax Electronic under Sections 114AA of the Customs Act. 1962 as explained in paras 5.9.5 to 5.9.7 above.”*

5. The said order was challenged by the Petitioner before CESTAT on 3rd May, 2024 and *vide* the impugned order the appeal of the Petitioner has been dismissed as under:

“On 11.09.2024, the learned counsel has sought two months time to make the pre deposit which was granted and the matter i was listed on 12.11.2024, further, once again, request was made to grant two months time and the matter was directed to be listed on 07.01.2025. In the order dated 12.11.2024, it was mentioned that in the event the deposit is not made the Bench may pass the I appropriate order. Today, the learned counsel submits that they have approached the High Court by e-filing. However, as on today, there is no order by the High Court in favour of the appellant.

2. *We are constrained to pass the order, dismissing the present appeal for not making the pre deposit. The appeal, is. accordingly I dismissed.”*



6. Aggrieved by the impugned order of CESTAT the Petitioner has preferred the present appeal.

Submissions of the Parties

7. Ld. Counsel for the Appellant submits that the total demand raised against the Appellant *i.e.*, Rs. 7,06,96,980/- *vide* the Order-in-Original dated 29th September, 2022 is a substantial amount and the Appellant does not have the financial capacity to pay the 7.5% of the said demand and penalty as pre-deposit. It is stated that the Petitioner's business is facing severe financial hardships and is burdened with several loans which were taken when the business was in good health. Hence, it is prayed that the condition for pre-deposit be waived by this Court.

8. It is submitted by the Ld. Counsel for the Department that it is now a settled position in law that the requirement of pre-deposit under Section 129E of the Customs Act is a mandatory requirement and the prayer for waiver of the same cannot be entertained by this Court. In support of this position the Ld. Counsel has relied upon the following decisions:

(i) ***Kantilal Bhaguji Mohite v. Commissioner, 2019 SCC OnLine Bom 5547;***

(ii) ***NK Sharma v. Assistant Commissioner, W.P. (C) 10353/2025 [decided on 21st July, 2025];***

(iii) ***Mark Splendour Nonwovens (P) Ltd. v. CCE, 2019 SCC OnLine Del 12502;***

(iv) ***Diamond Entertainment Technologies (P) Ltd. v. Commr. (CGST), 2019 SCC OnLine Del 12414***

9. It is noted that the aforesaid decisions have been passed in respect of Section 35F of the Central Excise Act, 1944, which also has the mandatory



requirement of pre-deposit *pari materia* to the requirement under Section 129E of the Customs Act.

10. On the other hand, Id. Counsel for the Petitioner relies upon ***Mohd. Akmam Uddin Ahmed v. Commr., 2023 SCC OnLine (Del) 2450***, wherein the Co-ordinate Bench of this Court has held that the Court has the power to exercise discretion to waive the pre-deposit in rare and deserving cases where clear justification is made out for interference.

Analysis and Findings

11. The Court has heard the parties and perused the various decisions relied upon by the parties. This issue of whether this Court has the discretion to waive of the mandatory pre-deposit under Section 129E of the Customs Act, 1962 is no longer *res integra* in view of the consistent decisions passed by the Supreme Court and this Court.

12. In various judgments it has now been held that after the amendment of Section 129E of the Customs Act, 1962 (hereinafter “*the Act*”) in 2014, the pre-deposit in terms of the said provision would have to be paid mandatorily. The said section as amended reads as under:

*“129-E. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.— The Tribunal or the Commissioner (Appeals), as the case may be, **shall not entertain any appeal**,—*

(i) under sub-section (1) of Section 128, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Principal Commissioner of Customs or Commissioner of Customs;



(ii) against the decision or order referred to in clause (a) of sub-section (1) of Section 129-A, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of Section 129-A, unless the appellant has deposited ten per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:

Provided that the amount required to be deposited under this section shall not exceed Rupees Ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014 (25 of 2014).”

13. In ***Diamond Entertainment Technologies (supra)*** the Court was considering whether in cases where the show cause notice and the period of dispute was prior to the date of amendment to Section 35F of the Central Excise Act, 1944, the requirement of mandatory pre-deposit would be applicable. The Court while relying on the decision of this Court in ***Anjani Technoplast Ltd. v. Commissioner of Customs, (2015) 326 ELT 472 (Del.)*** has held that in view of the words “*shall not*” used in amended Section 35F of the Central Excise Act, 1944, there is an absolute bar on CESTAT from entertaining the appeals without the pre-deposit. The relevant portion of the



said decision reads as under:

“12. In view of the above decisions, it can no longer lie in the mouth of any assessee, filing an appeal, before the CESTAT, after 6th August, 2014, to contend that, merely because the period of dispute, in its case, or the date when show cause notice was issued to it, was prior, in point of time to the amendment of Section 35F of the Central Excise Act/Section 129E of the Customs Act, it would not be required to make mandatory pre-deposit, or that it was entitled to seek waiver thereof, either in whole or in part.

13. *Thought it may be argued that, this writ Court, in exercise of the inherent powers conferred on it by Article 226 of the Constitution of India in appropriate cases, may allow the appellant to prosecute its appeal before the CESTAT, without requiring to pay the mandatory pre-deposit.*

14. In *Pioneer Corporation v. Union of India*, (2016) 340 ELT 63, *Shubh Impex v. Union of India*, (2018) 361 ELT 199 (Del) and *Manoj Kumar Jha v. DRI*, (2019) 365 ELT 166 (Del), this Court, even while dealing with cases in which the appeal had been filed before the CESTAT after 6th August, 2014, nevertheless, allowed the appeal to be prosecuted on payment of partial pre-deposit, given the financial stringency in which the respective appellants, before it, were placed; a reading of these decisions would reveal, that the attention of this Court had not been invited to its earlier judgment in *Anjani Technoplast (supra)* which set out, in clear and unambiguous terms, that every appeal, before the CESTAT, filed after the amendment of Section 35F/129E would be maintainable only if mandatory pre-deposit were made.



15. The Civil Appeal, preferred against the said decision, also stood dismissed by the Supreme Court, as reported in *Anjani Technoplast Ltd. v. CCE*, (2017) 348 ELT A132 (SC).

[...]

17. In view of the aforesaid merger, of the judgment of the Division Bench of this Court in *Anjani Technoplast* (supra) with the order passed by the Supreme Court in appeal thereagainst, we are bound, by Article 141 of the [Constitution of India](#), to follow the law laid down in *Anjani Technoplast* (supra), in preference to that laid down in *Pioneer Corporation* (supra), *Manoj Kumar Jha* (supra) and *Shubh Impex* (supra).

18. In the opinion of this Court, once the judgment in *Anjani Technoplast* (supra) stood merged with the dismissal of the Civil Appeal, preferred thereagainst, by the Supreme Court, there could be no question of this Court, in a subsequent case, adopting a view that an appeal, preferred before the CESTAT after 6th August, 2014, could be maintained without pre-deposit of the entire amount of duty confirmed against the concerned appellant by the authority below.

20. A reading of Section 35F of the Central Excise Act reveals, by the usage of the peremptory words “shall not” therein, that there is an absolute bar on the CESTAT entertaining any appeal, under Section 35 of the said Act, unless the appellant has deposited 7.5 % of the duty confirmed against it by the authority below.

21. The two provisos in Section 35F relax the rigour of this command only in two respects, the first being that the amount to be deposited would not exceed Rs.



10 crores, and the second being that the requirement of pre-deposit would not apply to stay applications or appeals pending before any authority before the commencement of the [Finance \(No. 2\) Act, 2014](#), i.e. before 6th August, 2014.

22. Allowing the CESTAT to entertain an appeal, preferred by an assessee after 6th August, 2014, would, therefore, amount to allowing the CESTAT to act in violation, not only of the main body of Section 35F but also of the second proviso thereto, and would reduce the command of the legislature to a dead letter.

23. Inasmuch as the judgment in Pioneer Corporation (supra), Shubh Impex (supra) and Manoj Kumar Jha (supra) are contrary to the law laid down in Anjani Technoplast (supra) as well as to the law laid down in Vice-Chancellor, University of Allahabad v. Dr. Anand Prakash Mishra (supra), A.B. Bhaskara Rao v. C.B.I. (supra), Manish Goel v. Rohini Goel (supra) and State of Bihar v. Arvind Kumar (supra), none of which have been noticed in the said decisions, it is not possible for us to follow the decisions in Pioneer Corporation (supra), Shubh Impex (supra) and Manoj Kumar Jha (supra), on which learned counsel places reliance.”

14. Thus, in view of the above legal position, the pre-deposit under Section 129E of the Act would also be mandatory and the CESTAT cannot entertain the appeal without the pre-deposit.

15. It would be relevant to note that the Co-ordinate Bench of this Court in the above decision has held that in exercise of the jurisdiction under Article 226 of the Constitution of India, in appropriate cases the mandatory pre-deposit may be condoned. This position has also been noted by this Court in



Mohd. Akmam Uddin Ahmed (supra) wherein the Court was considering a matter where the valuation of the seized goods itself was held to be unjustified and no proper calculation was provided in support of the same. Further, after considering the various judgements on the issue under considerations including ***Diamond Entertainment Technologies (supra)*** and ***Anjani Technoplast Ltd. (supra)***, it was held that the Court has the power to exercise discretion to waive of the mandatory pre-deposit in “rare and deserving cases”. The relevant position of the said decision reads as under:

“37. The decision of the Coordinate Bench of this Court in Diamond Entertainment case [Diamond Entertainment Technologies (P) Ltd. v. Commr., CGST, 2019 SCC OnLine Del 12414 : (2019) 368 ELT 579] , while refusing to permit the petitioner to prosecute its appeal before CESTAT without complying with the conditions of the mandatory pre-deposit did not, in fact, rule out that in exercise of its inherent powers under Article 226 of the Constitution of India. It was held that the appellant may be allowed to prosecute its appeal without the payment of the pre-deposit amount. Reliance is placed on para 11 of this judgment which reads as follows:

“11. Thought it may be argued that, this writ court, in exercise of the inherent powers conferred on it by Article 226 of the Constitution of India in appropriate cases, may allow the appellant to prosecute its appeal before the CESTAT, without requiring to pay the mandatory pre-deposit....”

[...]

39. The judgments in Dish TV India Ltd. case [Dish TV India Ltd. v. Union of India, 2020 SCC OnLine Del 2580] , Diamond Entertainment case [Diamond Entertainment Technologies (P) Ltd. v. Commr.,



CGST, 2019 SCC OnLine Del 12414 : (2019) 368 ELT 579] , Anjani Technoplast case [Anjani Technoplast Ltd. v. Commr. of Customs, 2015 SCC OnLine Del 13070 : (2015) 326 ELT 472] and Nimbus Communications Ltd. case [Nimbus Communications Ltd. v. Commr. of Service Tax, 2016 SCC OnLine Bom 6792] are distinguishable on facts as these judgments were primarily adjudicating the following two questions of law:

(i) the issue of challenge to the constitutional validity of Section 129-E of the Act and Section 35-F of the CE Act; and

(ii) whether the law as applicable pre-amendment (on or before 6-8-2014) in (i) above, would be applicable in the circumstances where the infringing act or the lis occurred prior to the amendment.

[...]

41. Thus, an analysis of the conspectus of law as enunciated above gives a clear understanding that after passing of the Amendment Act on 6-8-2014, the amended Section 129-E of the Act and also Section 35-F of the CE Act shall be applicable in those cases where the appeal has been filed after 6-8-2014.

42. However, as discussed above, the Coordinate Benches of this Court have exercised and, thus, preserved the power as available under Article 226 of Constitution of India to either waive the pre-deposit condition or to grant the right to appeal subject to a part deposit or security. The power, albeit, has been exercised only in rare and exceptional cases.

43. It was held by the Allahabad High Court, speaking through Dr D.Y. Chandrachud, Chief Justice (as His Lordship then was) in Ganesh Yadav case [Ganesh Yadav v. Union of India, 2015 SCC OnLine All 9174]



that:

“8. ... Whether the writ jurisdiction under Article 226 should be exercised, having due regard to the discipline which has been laid down under Section 35-F of the Act, is a separate matter altogether but it is important to note that the power under Section 226 (sic: Article 226) has not been, as it cannot be, abridged.”

(emphasis supplied)”

[...]

66. The valuation of the goods seized, is also not in terms of the prices as set forth in the Government of Assam's agarwood policy. No proper calculation has been made for the penalty levied. The penalty imposed on the petitioners has been imposed based on a provisional valuation. The penalty imposed is therefore without any legal basis and cannot be sustained.

67. The principle enunciated in the judgments in Pioneer Corpn. case [Pioneer Corpn. v. Union of India, 2016 SCC OnLine Del 6758 : (2016) 340 ELT 63] , Narender Yadav case [Narender Yadav v. Commr. of Customs, 2019 SCC OnLine Del 12415] , Shubh Impex case [Shubh Impex v. Union of India, 2018 SCC OnLine Del 8793] , Manoj Jha case [Manoj Kumar Jha v. DRI, (2019) 365 ELT 166] and Ganesh Yadav case [Ganesh Yadav v. Union of India, 2015 SCC OnLine All 9174] **is that the court has the power to exercise discretion to waive requirement of pre-deposit of penalty in “rare and deserving cases” where a clear justification is made out for interference.** In Narender Yadav case [Narender Yadav v. Commr. of Customs, 2019 SCC OnLine Del 12415] , this Court had found that the order-in-original did not give any reasons for the penalty



imposed on the petitioners and hence, was unwarranted. In Shubh Impex case [Shubh Impex v. Union of India, 2018 SCC OnLine Del 8793], the court found that the condition of pre-deposit would completely disable and paralyse the business of the appellant and given the financial condition and background of the appellant would suffer financial breakdown and irreparable harm. In Manoj Jha case [Manoj Kumar Jha v. DRI, (2019) 365 ELT 166] it is held that since the petitioner has very limited means to deposit any amounts, the relief to him is warranted.

68. Admittedly, the petitioners are poor daily wage earners who are unable to make a challenge to the seizure and confiscation on account of the penalty imposed on them. The foregoing discussion on the prices and valuation of agarwood chips and agarwood oil suggest, albeit, prima facie, that no proper valuation of the goods seized was carried out by the respondents.”

16. In view of the above, the law on this issue is now clear, that CESTAT does not have the power to admit appeal without the pre-deposit, however, this Court in exercise of writ jurisdiction may waive the same in rare circumstances, on a case to case basis.

17. This Court is not inclined to grant waiver from pre-deposit in exercise of writ jurisdiction since the present case, in the opinion of the Court, is not a rare case necessitating interference.

18. However, since there is a financial distress which is pleaded, the Appellant is permitted to pay the pre-deposit of Rs. 23,88,667/- within a period of six months with the CESTAT. If the said amount is deposited within six months, the appeal shall be restored to its original position.



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19. The appeal is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

AUGUST 28, 2025
kk/msh