

**HIGH COURT OF UTTARAKHAND AT NAINITAL**

HON'BLE THE CHIEF JUSTICE SHRI MANOJ KUMAR GUPTA
AND

HON'BLE SHRI JUSTICE SUBHASH UPADHYAY

10TH JULY, 2026

CENTRAL EXCISE APPEAL No. 07 of 2026

1: Naveen Kumar

--Appellant

Versus

1: The Commissioner Central Goods And Services Tax
2: The Commissioner
3: The Customs

--Respondents

Counsel for the appellant. : Mr. Rohit Arora, learned counsel.

Counsel for the respondents. : Mr. Shobhit Saharia, learned counsel.

JUDGMENT : (per Shri Manoj Kumar Gupta, C.J.)

1. Heard Mr. Rohit Arora, learned counsel on behalf of the appellant, and Mr. Shobhit Saharia, learned counsel on behalf of the Revenue.

2. The present appeal, under Section 35G of the Central Excise Act, 1944, has been filed against the order of Customs, Excise and Service Tax Appellate Tribunal, Principal Bench – Court No. IV in Service Tax Appeal No. 55160/2023, whereby the appeal filed by the appellant before the Tribunal, challenging the order of the Adjudicating Authority dated 29.04.2022 and the order of the Commissioner (Appeals) dated 16.03.2023, has been dismissed on the ground that the requirement of pre-deposit of 7.5%, while preferring the appeal



before the Commissioner (Appeals), was not fulfilled and, therefore, the appeal would not be maintainable.

3. The case of the appellant is that the appellant, while preferring the first appeal before the Commissioner (Appeals), had made pre-deposit of 7.5% of the amount demanded by the order-in-original and remaining 2.5% out of the total 10% pre-deposit amount was deposited by him before the Tribunal and, thus, he had fully complied with the statutory provision. However, the Tribunal has held that the amount deposited before the Commissioner (Appeals) is not liable to be taken into account as it was not as per Circular dated 24.06.2019, and the requirement of deposit of 10% is independent of the deposit made before the Commissioner (Appeals). It has also been observed that the mode of payment of deposit was also contrary to the instructions dated 28.10.2022 r/w Circular dated 24.06.2019.

4. By order dated 09.06.2026, the appeal was admitted on the following substantial questions of law :-

“(i) Whether in the facts and circumstances of the instant case, CESTAT is justified in dismissing the appeal ignoring the amount deposited by the appellant during pendency of the appeal.

(ii) Whether in case, the entire amount required to be deposited for maintaining the appeal before Commissioner (Appeals) and CESTAT had been deposited, the CESTAT should have considered the issues on merits rather than confining itself only to the order of Commissioner (Appeals).”



5. Mr. Shobhit Saharia, learned counsel appearing for the Revenue has obtained instructions from the Department, and wherein the Department has conceded that the amount deposited at the stage of first appeal is liable to be taken into account, while reckoning the compliance of the mandatory pre-deposit of 10% before the Tribunal in terms of Section 35F of the Act. The relevant part of the instructions, which have been received from the Additional Commissioner, Central Goods and Services Tax, Dehradun, is as follows :-

“Accordingly, the instructions in respect of Hon'ble High Court's Order dated 09th June 2026 are as under:

(a) That the Hon'ble CESTAT's Circular dated 09.07.2018 (copy enclosed) holds as under:

- *For a second appeal before CESTAT, the mandatory pre-deposit is 10% of the duty/penalty confirmed by the Commissioner (Appeals).*
- *The said 10% is inclusive of the 7.5% pre-deposit already/to be made at the first appellate stage.*
- *The appellant is not required to deposit a fresh 10% in addition to the earlier 7.5%.*
- *The earlier contrary view contained in CESTAT Circular dated 27.04.2017 is no longer valid and stands rescinded.*
- *All Benches and officers are required to strictly follow the Delhi High Court's interpretation in M/s Santani Sales Organization v. CESTAT.*

(b) That in the instant case the petitioner has made the mandatory pre-deposit of 10% amounting to Rs. 77,500/-, before filing of appeal before CESTAT, New Delhi on 4th July 2023, thus being compliant to the conditions stipulated vide Hon'ble CESTAT's Circular dated 09.07.2018.”

6. As the Commissioner (Appeals) has also dismissed the appeal on the ground that the pre-deposit of 7.5% of the amount before it was not as per the Circular dated 24.06.2019,



and not on merits, therefore, the order of the Tribunal dated 27.09.2024, as well as the order of the Commissioner (Appeals) are, hereby, set-aside. The matter is remitted back to the Commissioner (Appeals) for deciding the appeal on merits.

7. As the case has been decided on basis of the stand taken by the Department specific to the instant case, therefore, the question of law, as to whether a deposit was required to be made in terms of the Circular letter dated 24.06.2019, is left open for being considered in an appropriate case.

8. The appeal stands disposed of accordingly.

9. All pending applications stand disposed of accordingly.

MANOJ KUMAR GUPTA, C.J.

SUBHASH UPADHYAY, J.

Dt: 10th July, 2026
Rahul

RAHUL
PRAJAPATI