

Sayali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6704 OF 2025

**SAYALI
DEEPAK
UPASANI**

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Gaurirani B Singh (Proprietor-Sai
India Associates)

...Petitioner

Versus

Union of India and Others

...Respondents

Mr Mahesh Mandhana, for Petitioner.

**CORAM: M.S. Sonak &
Advait M. Sethna, JJ.**

DATED: 02 DECEMBER 2025

ORDER:- *(Per M. S. Sonak, J.)*

1. Heard Mr. Mahesh Mandhana, the learned Counsel for the Petitioner.
2. The Petitioner challenges the order in appeal made on 18 January 2023. This order has dismissed the Petitioner's Appeal against the Order in Original dated 23 February 2022, *inter alia*, on the ground that the mandatory pre-deposit did not accompany the Appeal.
3. By instituting this Petition, the Petitioner now challenges the show cause notice as being not only without jurisdiction and pleads violation of natural justice.

4. Firstly, there is nothing wrong with the view taken by the First Appellate Authority about not entertaining the Petitioner's Appeal for not complying with the mandatory requirement of pre-deposit. Secondly, there is no explanation as to why the Petitioner has not availed of the further remedy of an Appeal against the order of 18 January 2023.

5. The arguments that the order is wholly without jurisdiction or that it breaches natural justice are not *prima facie* acceptable. The absence of jurisdiction is based upon questions of law and fact. Similarly, even the allegations about non-receipt of notice, etc., are highly contentious and disputed. This is a matter in which any breach of natural justice, if any, will have to be established. So also, the issue as to whether the show cause notice was issued in the absence of compliance with jurisdictional parameters would involve an examination into jurisdictional facts about suppression, etc.

6. All these issues could have been conveniently gone into in an Appeal. However, the Petitioner, by not complying with the mandatory requirement of pre-deposit, has disabled himself from availing the statutory remedy of an Appeal.

7. In similar circumstances, this Court, after following the decision of the Hon'ble Supreme Court in the case of **Kotak Mahindra Bank Pvt. Ltd. v. Ambuj A. Kasliwal & Ors.**¹, has held that the High Court should not direct the the Appellate

¹ (2021) 3 SCC 549

Authorities to admit and hear Appeals unaccompanied by the minimum pre-deposit requirement under the statutory provisions. Further, the discretion under Article 226 should not be exercised in contravention of a mandatory statutory provision.

8. This was our view in the case of **Lalit Kulthia & Anr. v. Commissioner of Customs (Appeals) Mumbai III & Ors.**, in WP No. 476 of 2024, decided on 06-12-2024. Similar view was taken in the case of **Samuvel Chandran Vs. Commissioner of Customs and Another 2024 SCC Online Bom 4270**. The Hon'ble Supreme Court dismissed the SLP against this decision on 04 April 2025 (**2025 SCC Online SC 1817**).

9. Recently, in the case of **Rikhab Chand Jain vs. Union of India & Ors.**, in Civil Appeal No. 6719 of 2012, decided by the Hon'ble Supreme Court on 12 November 2025, the Hon'ble Supreme Court has held that the High Court was justified in not entertaining the Petition when the Petitioner, despite an equally efficacious remedy, indulged in the misadventure of invoking the extraordinary jurisdiction.

10. For all the above reasons, we decline to entertain this Petition and dismiss the same. No costs.

(Advait M. Sethna, J)

(M.S. Sonak, J)