

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

WRIT PETITION NO. 7872 OF 2025

Promod Kumar Kishorepuria	...Petitioner
Versus	
Union Of India Thr The Sec. Dept. Of Revenue Ministry Of Finance And Ors	...Respondents

Mr. Sudhir Kumar Mehta, Senior Advocate (through V.C), a/w
Ms. Neha Mehta, Ms. Aayushi Gohil, Mr. Umair Merchant
and Ms. Rima Ajmerwalla i/by M.T. Miskita & Company,
for Petitioner.

Mr. Ram Ochani, i/by Ms. Sangeeta Yadav, for Respondents.

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

DATED : 25 November 2025

P.C.:-

1. Heard Mr. Mehta, learned counsel for the petitioner and Mr. Ochani, learned counsel for the respondent.
2. The challenge in this petition is to the order dated 27 December 2024 made by the Commissioner of Customs, disposing of the adjudication proceedings, inter alia, against the petitioner.
3. As against the impugned order, the petitioner has an alternate and statutory remedy under Section 129 of the

Customs Act. This is sought to be avoided by making a cursory statement in paragraph 6 of the petition, which reads thus:-

“6. The Petitioner has no alternative remedy and appeal under Section 129 of the Customs Act would not be adequate since the Petitioner has been prevented from leading its evidences in the proceeding. It is settled law that the vices of the breach of natural justice is not curable in appeal.”

4. However, during arguments, learned Senior Advocate appearing for the petitioner submitted that none of the petitioner's contentions had been considered in the impugned order. He submitted that the petitioner's defence has been confused with the defence of some other parties, and on that basis, the impugned order has been made. He submits that this amounts to a gross violation of principles of natural justice, which is one of the exceptions based upon which the rule of exhaustion of alternative remedies may not be enforced.

5. With the assistance of the learned senior advocate, we have perused the impugned order. We find that the same is quite detailed. At least prima facie, we cannot accept that none of the petitioners' contentions has been considered. In fact, the impugned order refers to certain admissions made by the petitioner.

6. At this stage, it is not for us to decide whether such admissions were indeed made by the petitioner or not. At this stage, we cannot be expected to go into the correctness of the

view taken by the Commissioner.

7. However, the allegations of breach of natural justice, which have been casually made or the allegations that the impugned order does not consider any of the defences of the petitioner, at least, prima facie, cannot be accepted. Based upon the same, it would not be proper for us to deviate from the normal rule of exhaustion of alternate remedies statutorily provided in such matters.

8. In this case, a detailed review would be necessary only to determine whether there is, indeed, a breach of natural justice, as alleged. This would involve an investigation into the disputed issues, including determining prejudice, if any. A mere breach of natural justice or a technical breach of natural justice is not always sufficient for the grant of final relief; attendant prejudice must be pleaded and established.

9. In the case of **Obero Construction Ltd Vs. Union of India**¹ and other connected matters, we have considered the law on the issue of exhaustion of alternate remedies, wherein, we have referred to several precedents from the Hon'ble Supreme Court on this issue. Relying upon our reasoning in the said decision and the precedents referred to therein, we decline to entertain this petition, leaving it open to the petitioner to avail of the alternate statutory remedy.

10. We also refer to a recent decision of the Hon'ble

¹. Writ Petition (L) No. 33260 of 2023 decided on 11 November 2024.

Supreme Court in the case of **Rikhab Chand Jain Vs. Union of India and Ors**² highlighting the importance of exhaustion of alternate remedies and not attempting to bypass them, unless the matter would be traced to some of the well-settled exceptions to this practice. In the present case, we are satisfied that none of the exceptions apply. Therefore, we propose not to entertain this petition but to relegate the petitioner to avail of the alternate remedy under the statute.

11. For all the above reasons, we decline to entertain this petition. However, we leave it open to the petitioner to appeal the impugned order before the Appellate Authority.

12. If the petitioner institutes an appeal after complying with all prescribed formalities within four weeks from today, we direct the Appellate Authority to consider such appeal on its own merits, without adverting to the issue of limitation. This is because this petition was instituted on 17 March 2025 i.e., within the period prescribed for instituting an appeal.

13. Apart from that, we clarify that we have not examined the matter on the merits. Therefore, the observations, if any, in this order need not influence the Appellate Authority, should the petitioner indeed institute an appeal to challenge the impugned order. The observations are only in the context of deciding whether any extraordinary case is made out for deviating from the normal rule of exhaustion of alternate remedies.

². Civil Appeal No. 6719 of 2012 decided on 12 November 2025

14. Therefore, all contentions of all parties on merits are expressly kept open to be examined by the Appellate Authority in the first instance.

15. With the above liberties and directions, we dispose of this petition. No costs.

16. All concerned to act on an authenticated copy of this order.

(Advait M. Sethna, J)

(M.S. Sonak, J.)