IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13177 OF 2025

Bharat Poonamchand Jain ...Petitioner
Versus
Union of India & Ors. ...Respondents

Mr. Murtaza Najmi a/w Mr. Jackie Jain, Mr. Dilip Shukla, Adv. Nancy Kanungo & Ms. Priya for the Petitioner.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.
DATED : 13 October 2025

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

1. Heard Mr. Najmi for the Petitioner.

2. The challenge in this petition is to the Order-In-Original dated 1 August 2025.

3. In paragraphs 19 and 20, the Petitioner has made bald averments stating that he has no other efficacious remedy available to him. The impugned orders themselves point out that they are appealable. Therefore, such averments should never have been made by the Petitioner in this petition.

4. To address these false averments, the learned counsel for the Petitioner, on instructions, argues that the Petitioner is merely an employee and lacks the financial means to deposit Rs.18 lakhs as a pre-deposit for instituting an appeal. In this case, the Petitioner was alleged to be involved in the smuggling of Silver Jewellery of 1179 Cartons corresponding to 14249.00 kg. By considering the Petitioner's role, a penalty of approximately Rs. 2.3 crores has been imposed upon the Petitioner.

5. In the entire petition, there are no averments about the Petitioner's financial capacity. If the contentions now advanced across the bar had some merit, then at least some averments were necessary in the petition backed by proper material in support of the same. Instead, the Petitioner, by making a bald averment that he has no other alternate or efficacious remedy, has instituted this petition.

6. The learned counsel for the Petitioner has tried to argue the matter on merits by submitting that the sections that have been invoked against the Petitioner were not applicable. He also tried to explain a complicated transaction involving cash payment. We cannot investigate all these matters in the exercise of our summary and extraordinary jurisdiction under Article 226 of the Constitution of India. Besides, once the law has provided the Petitioner with the statutory remedy to appeal such orders, unless an exceptional case is made out, there is no question of entertaining this petition.

7. In the case of ***Oberoi Constructions vs. Union of India & Ors.***[1] We have discussed in detail the law relating to exhaustion of alternate remedies, wherein we have also referred to several precedents of the Hon'ble Supreme Court as to the circumstances in which petitions could be entertained despite the existence of alternate statutory remedies. Relying upon the reasoning in the said decision as also the reasoning in the precedents referred to therein, we decline to entertain this petition.

8. The learned counsel for the Petitioner states that we must consider waiving the pre-deposit requirement, and the Petitioner is ready and willing to make a pre-deposit of Rs.5 lakhs as against the requirement of Rs.18 lakhs. Such a submission also cannot be accepted because it contradicts the provisions of Section 129E of the Customs

1 (2025) 137 GSTR 601

Act, 1962, which not only contemplates a pre-deposit but also provides for no waiver.

9. In the case of ***Kotak Mahindra Bank Pvt. Ltd. vs. Ambuj A. Kasliwal & Ors.***[2], the Hon'ble Supreme Court has held that the High Court should not direct the Appellate Authority to admit and hear appeals unaccompanied by the minimum pre-deposit requirements under the statute. The Hon'ble Supreme Court has held that the discretion under Article 226 of the Constitution of India cannot be exercised against the mandatory requirement of statutory provisions.

10. In the case of ***Manjeet Singh vs. Union of India***[3], the Co-ordinate Bench of this Court declined to grant a waiver of the minimum pre-deposit of 7.5% of the penalty under Section 129E of the Customs Act. This decision considers several contentions and precedents on the subject.

11. For the above reasons, we decline to entertain this petition and relegate the Petitioner to the alternate remedy of an appeal, if the Petitioner chooses to avail themselves of it. However, suppose the Petitioner institutes an appeal within four weeks from the date of uploading of this order by complying with all statutory requirements like pre-deposit, etc.. In that case, the Appellate Authority must consider the appeal on merits without adverting to the issue of limitation.

12. With the above liberty, we dispose of this petition without any order for costs. All concerned must act on an authenticated copy of this order.

(Jitendra Jain, J.) **(M. S. Sonak, J.)**

2 2021 3 SCC 549
3 2023 (383) ELT 308 (Bombay)

Signed by: Sayyed Saeed Ali
Designation: PA To Honourable Judge
Date: 15/10/2025 15:30:17