IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 208 OF 2025

M/s. G. Khanna & Company	]
A Proprietorship Firm	]
having its registered office at	]
Gala No.305, Plot No.8,	]
Sterling Estate,	]
Ramchandra Lane, Kachpada,	]
Malad West, Mumbai – 400064	]
Authorized Signatory	]
Mr. Gagan Satyapal Khanna	]..Petitioner

Versus

1]	Union of India	]
	Through the Secretary	]
	Department of Revenue	]
	Ministry of Finance,	]
	North Block,	]
	New Delhi – 110 001	]
		]
2]	State of Maharashtra	]
	Through the Secretary	]
	Ministry of Finance,	]
	Department of Revenue,	]
	Mantralaya,	]
	Mumbai – 400 001	]
		]
3]	Joint Commissioner (Appeals-III)	]
	CGST & CX, Mumbai	]

	9th Floor, Piramal Chambers,	]
	Jijibhoy Lane, Lalbaug	]
	Parel, Mumbai – 400012	]
		]
4]	Deputy Commissioner,	]
	CGST & CX, Mumbai West	]
	Commissionerate, Takshashila	]
	Building, Samant Estate,	]
	Goregaon (East),	]
	Mumbai – 400063	]..Respondents

Mr Mahesh Raichandani, a/w Adv. Dhanishtha Kawale i/by UBR Legal Advocates, for the Petitioner.
Mr J B Mishra a/w Mr. Ashutosh Mishra for Respondent No.1-UOI.
Mr Himanshu Takke, AGP, for Respondent No.2 – State.
Ms Shehnaz Bharucha a/w Adv. Saket Ketkar for Respondent Nos. 3 & 4..

CORAM **M.S. Sonak &**
Advait M. Sethna, JJ.
DATED: **23 September 2025**

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

1. Heard learned counsel for the parties.

2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. The challenge in this Petition is to the Order dated 19 September 2024 by which the Appellate Authority rejected the Petitioner's Appeal on the ground of non-compliance with the mandatory condition of pre-deposit of 10% of the tax amount.

The Appellate Authority reasoned that 10% of the tax amount would come to approximately Rs.12,76,000/- and the Petitioner had deposited only Rs.8.62 lakhs.

4. Mr. Mahesh Raichandani, the learned counsel for the Petitioner, submitted that firstly, there was no short deposit. Secondly, and in any event, considering the law laid down by this Court in the case of **JEM Exporter Vs Union of India**[1] and **D N Polymers Vs Union of India & ors**[2], the Appeal could not have been rejected without giving the Petitioner an opportunity to satisfy the Appellate Authority that there was no short deposit and to make good the short deposit. He submitted that since such an opportunity was never granted to the Petitioner, the impugned order is liable to be set aside, and the matter remanded to the Appellate Authority for deciding the Petitioner's Appeal on merits.

5. Ms. Bharucha, the learned counsel for Respondent Nos. 3 and 4 submitted that the Petitioner was heard by the Appellate Authority, as is evident from the impugned order dated 19 September 2024. She submitted that no such issue was ever raised on behalf of the Petitioner, and therefore, the contention regarding the denial of opportunity should not be entertained in the facts of this case. She submitted that this was indeed a case of short deposit, and since the deposit of 10% of the tax amount in dispute was a mandatory requirement, there was no error in the impugned order made by the Appellate Authority.

6. The rival contentions now fall for our determination

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1 Writ Petition (L) No.25142 of 2022 decided on 02/08/2023

2 Writ Petition No.18007 of 2024 decided on 09/12/2024

7. The records show that the Petitioner was personally heard in the matter. However, it is quite apparent that such a hearing was on the merits of the Appeal. The Petitioner does not even complain about any lack of hearing on the merits of the Appeal. The Petitioner's complaint is that the Appeal was dismissed on a ground about which they were given no notice whatsoever, and consequently, no opportunity to satisfy the Appellate Authority that there was no short deposit and, in any event, to make good the procedural requirement, assuming that there was some short deposit.

8. Therefore, in the above circumstances, we are unable to accept Ms Bharucha's contention. This contention proceeds on an incorrect understanding of the Petitioner's case and the Petitioner's contentions.

9. In the case of *JEM Exporter* (supra) the Coordinate Bench of this Court has made the following observations in paragraph 11:-

> *"11. The reasons given in paragraphs 5.4 to 5.6 of the order in appeal that is to say proof of pre-deposit having not been filed, certified copy of the order having not been filed and appeal having not been authenticated as per rule 26(a) is a procedural requirement for fling the appeal.* ***In our view, justice cannot be denied for failure to comply with the procedure without giving an opportunity to the Appellant to rectify the procedural defects.*** *In our view, the Commissioner (Appeal) ought to have issued a defect memo calling upon the Petitioner to produce the proof of pre-deposit of tax as per section 107(6) of the CGST Act, 2017, for filing the certified copy of the order and for authentication of the appeal memo as per rule*

> *26(2)(a). The Commissioner (Appeal) having not given an opportunity to the Petitioner for curing the procedural defect was not justified in rejecting the appeal. This would be contrary to the principal of natural justice."*

10. Similarly, in the case of *D N Polymers* (supra) this Court has held that the Petitioner should have been informed about the shortfall and even granted a reasonable opportunity to make good the shortfall, if any. This Court relied upon yet another decision in the case of **Delphi World Money Ltd. Vs The Union of India and ors**[3] to interfere with a similar order of the Appellate Authority dismissing the Appeal for the alleged shortfall in deposit without granting the Appellant any reasonable opportunity.

11. For the above reasons and in accordance with the law laid down in the above cases, we set aside the impugned order dated 19 September 2024 and remand the matter to the Appellate Authority.

12. The Appellate Authority must give the Petitioner an opportunity to satisfy it that there was no shortfall. Further, if the Appellate Authority, after hearing the Petitioner, concludes that there was a shortfall, then a reasonable opportunity of making good that shortfall by granting the Petitioner about 4 weeks' time to make good the shortfall must be granted to the Petitioner.

13. Despite all this, if the Petitioner fails to make good the shortfall, then the Appellate Authority would be entitled to dismiss the Petitioner's Appeal on the ground of non-compliance with the mandatory condition of pre-deposit. If

[3] Writ Petition (L) No.28914 of 2024

the shortfall is made good, needless to add that the Appellate Authority must, after hearing the Petitioner afresh, decide the Petitioner's Appeal in accordance with law and on its own merits.

14. We clarify that we have not addressed either party's contentions on the merits, even remotely. Therefore, all contentions of the parties on the merits of the matter are kept open for the decision of the Appellate Authority, should this issue of shortfall in deposit be resolved.

15. The rule is made absolute in the above terms. No costs.

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

(Advait M. Sethna, J) **(M.S. Sonak, J)**