

Amol

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

WRIT PETITION NO. 2652 OF 2025

Biren Shah & Ors

...Petitioners

Versus

Union of India & Ors

...Respondents

Mr Swapna Gokhale, for Petitioner.

Mr Saket R Ketkar, for Respondent No. 2-DRI.

Ms Mamta Omle, *i/b*, *Mr Karan Adik*, for Respondent No. 3.

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

DATED: 09 September 2025

PC:-

1. Heard Ms Gokhale for the Petitioner, Mr Ketkar for Respondent No. 2 and Ms Mamta Omle for the Respondent No. 3.

2. The challenge in this Petition is to the order dated 12 March 2024 imposing a penalty Rs. 13 Crores on the Petitioners.

3. The Petitioners have an alternate and efficacious remedy before the Tribunal (Customs Excise & Service Tax Appellate Tribunal). However, in Ground 'Q' of the Petition, the Petitioners have referred to the decision to the Hon'ble Supreme Court in the case of **Whirlpool Corporation Vs**

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Registrar of Trade Marks, Mumbai and Ors¹, and vaguely alleged that this is a case of violation of natural justice.

4. At this stage of arguments, Ms Gokhale submitted that the Petitioners were served with notices of personal hearing but could not attend the hearing. She states that there is a violation of natural justice because the written submissions filed on behalf of the Petitioners were not at all considered in the impugned order. Ms Gokhale also submitted that an appeal would entail a pre-deposit of 10% and considering that the penalty amount is of 13 Crores, the pre-deposit amount of Rs. 1.30 Crores would be substantial and render the remedy of appeal to the CESTAT non-efficacious.

5. As noted earlier, the Petitioners have alternate and efficacious remedy of instituting an appeal. The Petitioners are traders in gold. The impugned order refers to the quantum of gold and its value that the Petitioners were found to be trading in. Therefore, by simply referring to the quantum of penalty, we cannot accept the Petitioners' case about the requirement of pre-deposit being grossly disproportionate or onerous. Based upon such plea backed with no evidence whatsoever, we cannot deviate from the practice of exhaustion of alternate remedies.

6. The contention about the violation of natural justice, at the highest, is debatable and can always be raised by the Petitioners before the Tribunal. Admittedly, notice of hearing was furnished to the Petitioners but they choose not to avail of the personal hearing.

¹ (1998) 8 SCC 1

7. Accordingly, none of the parameters prescribed in *Whirlpool Corporation* (supra) could be said to be attracted in the present case so as to excuse the Petitioners from exhausting the alternate remedy of appeal.

8. In the case of **Oberoi Constructions Ltd Vs Union of India & Ors²**, wherein it was surveyed the precedents of the subject and also noted the rising trend of instituting Petitions by-passing alternate remedies provided under the statute.

9. For all the above reasons, we decline to entertain this Petition and dismiss it on the ground of alternate remedy which is available to the Petitioners.

10. However, if the Petitioners institute appeals within eight weeks from today after complying with all legal requirements, we direct that the Tribunal should consider such appeal on their own merits without adverting to the issue of limitation this is because the Petitioners were pursuing this Petition which is today disposed of.

11. All contentions of all parties, including the Petitioners' contentions raised in this Petition are expressly left open to be decided by the Tribunal in the first instance.

12. This Petition is disposed of with liberty in the above terms. No costs. All concerned to act on an authenticated copy of this order.

(Advait M. Sethna, J)

(M.S. Sonak, J)

² 2024 SCC OnLine 3508