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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 5464/2025**

NAVIN ROAD LINES .....Petitioner

Through: Mr. Ruchir Bhatia & Mr. Abhishek Anand, Advs. (9810371417)

versus

ASSISTANT REGISTRAR CUSTOMS EXCISE AND SERVICE TAX APPELLATE TRIBUNAL .....Respondent

Through: Mr. Aditya Singla, SSC, CBIC with Ms. Arya Suresh, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SAURABH BANERJEE

O R D E R

% 20.11.2025

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner under Articles 226 and 227 of the Constitution of India, *inter alia*, challenging the impugned order dated 8th January, 2025 passed by the Central Excise & Service Tax Appellate Tribunal, New Delhi (hereinafter, '*CESTAT*').

3. The issue raised in this case is that the CESTAT has refused to entertain the appeal of the Petitioner on the ground of defect in payment of pre-deposit. The pre-deposit, in fact, has been made by the Petitioner in a different account *i.e.*, under the '*Excise Head*'.

4. On 28th April, 2025, ld. Counsel for the Respondent was directed to seek instructions in this matter.

5. Till date no counter affidavit has been filed by the Respondent. However, in the meantime, this Court has already considered this very issue in ***W.P.(C) 17236/2025*** titled ***M/s J.M.D Enterprises v. Customs, Excise And Service Tax, Appellate Tribunal, New Delhi & Ors,*** wherein under similar

circumstances, deposits made under the '*Excise Head*' have been permitted to be considered as pre-deposit for the purpose of filing of appeals before the CESTAT. The reasoning given in the order dated 13th November, 2025 passed in ***W.P.(C) 17236/2025***, is as under:

> *"12. The present case would also be covered by the said decision. The deposit may be made under the Central Excise head as the Petitioner had no other option as the service tax portal is non-functional. Hence, it cannot be said that the pre-deposit has to be made again. Pre-deposit having been made with the government ultimately the amount goes to the exchequer.*
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> *13. Accordingly, the appeal of the Petitioner shall now be considered by CESTAT on merits.*
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> *14. **However, the pre-deposit made under the Central Excise head shall be considered as pre-deposit for the purposes of the said appeal**.*
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> *15. Mr. Tyagi, ld. SSC shall, however, place on record after instructions, an affidavit as to how the Government wishes to resolve this issue. A responsible official from the GST Department shall join the proceedings online in order to assist the Court so that similarly placed parties who wish to make the pre-deposit under the Service Tax Regime are not put to inconvenience."*

6. The Service Tax portal was non-functional after the migration took place for the GST regime. Moreover, the pre-deposit in this case has already been made by the Petitioner under the '*Excise Head*'. The same is recorded in the impugned order passed by the CESTAT dated 8th November, 2025. The relevant portion of the said order reads as under:

> *"**2. Learned counsel has brought to notice that since the payment of pre-deposit was made under excise***

__head, writ petition has already been filed before the High Court of Delhi. Outcome is prayed to be awaited__. However, it is observed that the matter is pending since the year 2023 for awaiting removal of defects. The other defects then the defect of payment of pre-deposit amount were got removed by March 2024 itself. Since then till date, the matter is pending awaiting the payment of pre-deposit. It is also observed that the last opportunity was warned to cure the said defect vide order dated 02.07.2024. Still some more time given to the appellant and one another warning of last opportunity was extended vide order dated 19.08.2024. In the interest of justice, the appellant was again granted time with the similar warning of last opportunity vide order dated 02.09.2024. Despite, three further adjournments subsequent to the said date the defect has not been removed so far. Vide the previous order dated 17.12.2024, it was made clear that after three weeks if the defect yet not been removed, the appeal shall be returned as defective.

3. In view thereof and the fact that the matter before Hon'ble High Court is still a diary matter, we do not deem it reasonable to extend any further time to the appellant for the purpose. The matter, therefore, remains defective, hence, is rejected. File to be returned to the appellant, however, with the liberty to re-file the appeal subject to the outcome, if any,-from the Hon'ble High Court of Delhi."

7. The challan which has been placed on record by the Petitioner as Annexure P-5 in the present petition is not complete and Mr. Bhatia, ld. Counsel for the Petitioner has handed across the complete challan which is a legible copy. The same is taken on record. A copy of the same be also given to ld. Counsel for the Respondent.

8. The said proof of deposit of the pre-deposit amount to the tune of Rs.

1,49,190/- under the '*Excise Head*' is contained in the challan bearing CTIN No. 2310585173 dated 5th October, 2023 at 02:59 pm.

9. Considering that the amount has already been deposited, the defect in the CESTAT appeal is taken as removed.

10. Let the appeal be re-filed within one month before the CESTAT. The same shall be listed before CESTAT on 12th January, 2026. By the said date, the Department is also free to verify the genuinity of the challan.

11. The writ petition is disposed of in the aforesaid terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J

SAURABH BANERJEE, J

NOVEMBER 20, 2025
kk/ck