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

Date of decision: 14th November, 2025

+ **W.P.(C) 15945/2025, CM APPL. 65231/2025 & CM APPL. 71082/2025**

ANOOP KUMAR GARG

.....Petitioner

Through: Mr. Chinmaya Seth, Mr. A.K. Seth,
Ms. Palak Mathur, Advs.

versus

THE COMMISSIONER OF CUSTOMS (IMPORTS)Respondent

Through: Ms. Anushree Narain, SSC with Mr.
Naman Chouls & Mr. Yamit Jetley,
Advs.

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AND

+ **W.P.(C) 15999/2025 & CM APPL. 65495/2025**

RAHUL AGGARWAL

.....Petitioner

Through: Mr. Chinmaya Seth, Mr. A.K. Seth,
Ms. Palak Mathur, Advs.

versus

THE PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT)

.....Respondent

Through: Ms. Anushree Narain, SSC with Mr.
Naman Chouls & Mr. Yamit Jetley,
Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. The present two petitions have been filed by the Petitioners under



Article 226 of the Constitution of India, *inter alia*, assailing the impugned order dated 15th July, 2025 passed by the Customs, Excise & Service Tax Appellate Tribunal (*hereinafter*, 'CESTAT') in Defect Diary Nos. 55133/2024 and 55131/2024 (*hereinafter*, 'impugned order').

3. These two petitions arise out of Show Cause Notice dated 20th October, 2022 issued by the Commissioner of Customs, Inland Container Depot, (*hereinafter*, 'ICD') (Tughlakhabad) (*hereinafter*, 'SCN'). The allegations on the basis of intelligence from the Directorate of Revenue Intelligence (*hereinafter*, 'DRI'), Delhi Zonal Unit (*hereinafter*, 'DZU') was that three entities, were alleged to be indulging in evasion of Customs Duty, by undervaluing the imports of sanitary and bathroom fittings. The three entities are as follows:

- i. **M/s Gravity Bath Pvt. Ltd.** with its Directors-Anoop Kumar Garg, Rahul Agarwal and Father-Suresh Chandra Agarwal.
- ii. **M/s Vinayak Traders**, a sole proprietary concern of Anoop Kumar Garg.
- iii. **M/s Aditya Industries**, proprietor firm of Rahul Agarwal.

4. Pursuant to the said intelligence which was received, searches were conducted at various premises of the aforesaid firms, as also at the residences of the partners/proprietors.

5. During the course of the search, Rs. 34,00,000/- cash was also seized by the DRI Officials and Rs.2,00,00,000/- was also deposited by the Petitioners under protest.

6. Thereafter, the SCN was issued to the Petitioners, as to why action ought not to be taken in respect of the said undervaluation. Pursuant to which, replies were filed by the Petitioners as also by the other co-noticees.



7. In the said SCN proceedings, the Order-in-Original was passed on 05th June, 2024 by the Adjudicating Authority (*hereinafter*, 'OIO'). In the OIO, after due consideration, the Adjudicating Authority has imposed various penalties upon the Petitioner-Anoop Kumar Garg. The amounts imposed as penalty are captured in the chart as under:

In respect of M/s Gravity Bath Pvt. Ltd. as per OIO					
	Differential Duty				Redemption Fine
		114A	114AA	112(a)(ii)	
Sh Anoop Kumar Garg, Director			11426000	11426000	
In respect of M/s Aditya Industries as per OIO					
	Differential Duty	Penalty			Redemption Fine
		114A	114AA	112(a)(ii)	
Sh Anoop Kumar Garg			1150000	1150000	

In respect of M/s Gravity Bath Pvt. Ltd. as per Annexure P9					
	Differential Duty	Penalty			Redemption Fine
		114A	114AA	112(a)(ii)	
Sh Anoop Kumar Garg, Director			11426000	11426000	
In respect of M/s Aditya Industries as per Annexure P9					
	Differential Duty	Penalty			Redemption Fine
		114A	114AA	112(a)(ii)	
Sh Anoop Kumar Garg			0	1150000	



8. The Petitioners had then preferred appeals against the OIO, before the CESTAT.

9. *Vide* the impugned order dated 15th July, 2025, the CESTAT has refused to entertain the appeals on the ground that the pre-deposit has not been made. The findings of CESTAT are set out below:

“13. The appellant has not made the pre-deposit. In view of the aforesaid decisions of the Supreme Court, the Delhi High Court and the Madhya Pradesh High Court, it is not possible to permit the appellant to maintain the appeal without making the required pre-deposit.

14. As the mandatory statutory requirement of pre-deposit has not been satisfied by the appellant, the appeal stands dismissed.”

10. A chart has been handed over by Mr. Chinmaya Seth, Id. Counsel for the Petitioner, setting out that the following amounts had been deposited by the Petitioners:

<i>Party</i>	<i>Amount deposited</i>	<i>Challan details</i>
<i>Gravity Bath</i>	<i>2,00,00,000.00</i>	<i>TR-6 Challan No. 089666</i>
<i>Ankit Goyal</i>	<i>4,65,375. 00</i>	<i>TR- 6 ChallanNo. 000286</i>
<i>Suresh Chand</i>	<i>6,41,890.00</i> <i>2,88,110.00</i>	<i>TR-6 ChallanNo. 000287</i> <i>TR-6 Challan No. 000815</i>
<i>Aditya Industries</i>	<i>16,07,113.00</i>	<i>TR-6 ChallanNo. 000931</i>
<i>Vinayak Traders</i>	<i>28,12,943.00</i>	<i>TR-6 ChallanNo. 000932</i>
<i>Total</i>	<i>2,58,15,431</i>	

11. According to the Id. Counsel for the Petitioners, a total amount of Rs. 2.58 Crores has already been deposited by the Petitioners with the Customs Department. In addition, a sum of Rs. 34,00,000/-, which was recovered in



cash by the Customs Department, has also been retained by the Customs Department. Thus, the amount required for pre-deposit is already fully satisfied by the Petitioners.

12. On the other hand, Ms. Anushree Narain, Id. SSC, on behalf of the Respondent has sought instructions from the Assistant Commissioner (Legal), ICD, Tughlakabad, and submits that the sum of Rs. 34,00,000/-, which was confiscated under Section 121 of the Customs Act, 1962 (*hereinafter, 'the Act'*), was as sales proceeds of smuggled goods. Thus, the same cannot be adjusted towards a pre-deposit. It is further submitted that Section 129E of the Act requires a specific deposit to be made.

13. The Court has considered the matter. The confiscation of Rs. 34,00,000/-, in terms of Section 121 of the Act, is pursuant to the directions passed in the OIO.

14. In addition, the above amounts which have been deposited by the Petitioners, including the amount deposited under protest, during the course of investigation, cannot be completely ignored and a fresh deposit cannot be called for in this manner, only to deprive the Petitioners of their legal appellate remedy.

15. Insofar as amounts paid under protest and whether they can be considered for the purpose of pre-deposit is concerned, there are at least two decisions that would of relevance. In *VVF (India) Limited v. State of Maharashtra and Ors. (2022) 13 SCC 644*, the Supreme Court was dealing with provisions of the Maharashtra Value Added Tax Act, 2002, which mandated for a pre-deposit of 10% under Section 26(6-A) for filing of an appeal. The said provision reads as under:

““26. (6-A) No appeal against an order, passed on or



after the commencement of the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017 (Mah. Act 31 of 2017), shall be filed before the appellate authority in first appeal, unless it is accompanied by the proof of payment of an aggregate of the following amounts, as applicable—

(a) in case of an appeal against an order, in which claim against declaration or certificate, has been disallowed on the ground of non-production of such declaration or, as the case may be, certificate then, amount of tax, as provided in the proviso to sub-section (6),

(b) in case of an appeal against an order, which involves disallowance of claims as stated in clause (a) above and also tax liability on other grounds, then, an amount equal to 10% of the amount of tax, disputed by the appellant so far as such tax liability pertains to tax, on grounds, other than those mentioned in clause (a),

(c) in case of an appeal against an order, other than an order, described in clauses (a) and (b) above, an amount equal to 10% of the amount of tax disputed by the appellant,

(d) in case of an appeal against a separate order imposing only penalty, deposit of an amount, as directed by the appellate authority, which shall not in any case, exceed 10% of the amount of penalty, disputed by appellant: ”

16. The Supreme Court, while interpreting the above provision, observed as under:

“9. While analysing the rival submissions, it is necessary to note, at the outset, that, under the provisions of Section 26(6-A), the aggregate of the amounts stipulated in the sub-clauses of the provision has to be deposited and proof of payment is required to be produced together with the filing of the appeal. Both clauses (b) and (c) employ the expression “an amount equal to ten per cent of the amount of tax disputed by



the appellant". The entirety of the undisputed amount has to be deposited and 10% of the disputed amount of tax is required to be deposited by the appellant. In the present case, the appellant disputes the entirety of the tax demand. Consequently, on the plain language of the statute, 10% of the entire disputed tax liability would have to be deposited in pursuance of Section 26(6-A). The amount which has been deposited by the appellant anterior to the order of assessment cannot be excluded from consideration, in the absence of statutory language to that effect. A taxing statute must be construed strictly and literally. There is no room for intendment. If the legislature intended that the protest payment should not be set off as the deposit amount, then a provision would have to be made to the effect that 10% of the amount of tax in arrears is required to be deposited which is not the case.

11. The High Court, while rejecting the petition, placed reliance on the fact that there has to be a proof of payment of the aggregate of the amounts, as set out in clauses (a) to (d) of Section 26(6-A). The second reason which weighed with the High Court, is that any payment, which has been made albeit under protest, will be adjusted against the total liability and demand to follow. Neither of these considerations can affect the interpretation of the plain language of the words which have been used by the legislature in Section 26(6-A). The provisions of a taxing statute have to be construed as they stand, adopting the plain and grammatical meaning of the words used. Consequently, the appellant was liable to pay, in terms of Section 26(6-A), 10% of the tax disputed together with the filing of the appeal. There is no reason why the amount which was paid under protest, should not be taken into consideration. It is common ground that if that amount is taken into account, the provisions of the statute were duly complied with. Hence, the rejection of the appeal



was not in order and the appeal would have to be restored to the file of the appellate authority, subject to due verification that 10% of the amount of tax disputed, as interpreted by the terms of this judgment, has been duly deposited by the appellant.”

17. Thus, the Supreme Court, after observing that there is no reason why amount paid under protest should not be taken into consideration for the pre-deposit, set aside the judgment of the Bombay High Court which had taken a contrary view.

18. Recently, in the context of GST, in ***W.P.(C) 7220/2025*** titled ***Rajesh Tanwar v. Commissioner, CGST, Delhi West*** the Court had directed the amount lying with the GST Department, deposited by the Petitioner during the course of investigation would be adjusted in respect of pre-deposit. The direction given in the said case are as under:

“7. In view of the above, the following directions are issued.

(i) The Petitioner would be permitted to prefer appeals challenging both the orders dated 1st February, 2025 and 4th February, 2025 and a pre-deposit qua the demand of Rs.2,83,56,714/- shall be paid in filing the appeal challenging the impugned order 1st February, 2025. In the second appeal, no pre-deposit shall be paid on the grounds of duplication.

(ii) For the purpose of pre-deposit, the amount that is lying with the GST Department, which was deposited by the Petitioner during the course of investigation, can be adjusted in respect of the predeposit.

(iii) In view of the above, the Petitioner may file both the appeals by 15th July, 2025 seeking



adjustment as directed above. The appeals, if filed by 15th July, 2025 in terms of this order, shall not be dismissed as being barred by limitation. If online filing is proving difficult due to adjustment, which the Court has granted today, the Petitioner is permitted to file the appeal physically.”

19. In the present case, the provision that is relevant is Section 129E of the Customs Act, 1962 which reads as under:

“[129E. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.-- The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,--

(i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the 1 [Principal Commissioner of Customs or Commissioner of Customs];

(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 129A, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 129A, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:



Provided that the amount required to be deposited under this section shall not exceed rupees ten crores: Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014 (25 of 2014).]”

20. The appeal that the Petitioner intended to file was under Section 129A(1)(a) of the Customs Act, 1962 which requires deposit of 7 ½ of the amounts which are in dispute. The Petitioners disputes the complete liability i.e. both duty and penalty in the present case.
21. Once the amount is in dispute, against any Order-in-Original, the right to file an appeal is a statutory right. Section 129E does not incorporate any language to exclude amounts paid under protest or amount collected during investigation or confiscated during investigation.
22. Following the decision of the Supreme Court in **VVF (India) Limited(supra)**, in the absence of any language in the provision, the said amounts deposited prior to the assessment cannot be excluded for consideration.
23. In the light of the factual and legal position as discussed above, it would be contrary to law as also inequitable to hold that when such a substantial amount already stands deposited with the Customs Department, further pre-deposits have to be paid, only for the purpose of hearing of the appeal. This cannot be the Scheme of the Act.
24. Accordingly, in the facts and circumstances of this case, considering the deposits already lying with the Customs Department, the Petitioners' appeals deserve to be heard on merits.
25. Accordingly, the impugned order dated 15th July, 2025 is set aside.



26. The Defect Diary Nos. 55133/2024 and Defect Diary No. 55131/2024 may now be converted into appeals before CESTAT, and be listed to be heard on merits.

27. Let the two Appeals also be taken up by CESTAT on 25th November, 2025, when the connected appeals are stated to be listed. The present order be communicated to the Registrar, CESTAT by the Registry of this Court.

28. Both the petitions are disposed of in these terms. Pending Applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

NOVEMBER 14, 2025^{/tg/sm}
(corrected and released on 18th November, 2025)