



2025:DHC:11213-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 10th December, 2025******Uploaded on: 12th December, 2025***

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CUSAA 167/2025 & CM APPL. 71094/2025**KANCHAN LAL AGRAWAL****.....Appellant****Through: Mr. Rahul Raheja and Mr. Gaurav
Prakash, Advocates. (7070519100)****versus****COMMISSIONER OF CUSTOMS****.....Respondent****Through: Mr Aditya Singla SSC CBIC with Ms
Arya Suresh Nair Mr Akhil Sharma,
Ms Shreya Lamba and Mr Dhananjay
Gautam, Advocates (9466427318)****CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE SHAIL JAIN****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present Appeal has been filed by the Appellant under Section 130 of the Customs Act, 1962, *inter alia*, assailing the impugned order dated 18th September, 2024 passed by the Customs, Excise & Service Tax Appellate Tribunal (*hereinafter*, 'CESTAT') in Custom Restoration of Appeal Application No. 50290 of 2020 (*hereinafter*, 'impugned order'), which is almost 21 years later.
3. *Vide* the impugned order, CESTAT has refused the further extension for the restoration of the appeal.
4. In the present case, the seizure of 702 kilograms of silver had taken place on 30th August, 1991. The investigation was concluded by the



Directorate of Revenue Intelligence, Delhi Zonal Unit, and the Order-in-Original which is dated, 29th September, 1997 (*hereinafter*, 'OIO') was passed by the Respondent Department. *Vide* the OIO, absolute confiscation was directed and penalty of Rs.15,00,000/- were imposed. The operative portion of the OIO reads as under:

“ ORDER

I accordingly make the following orders:

49. I order absolute confiscation of the seized 581 slabs of silver weighing 702.78 kgs valued at Rs.47,08,,626/- under Section 111(d) of the Customs Act, 1962.

50. I also order for absolute confiscation of the Tata mobile van bearing registration MP-09-D-8093 under Section 115 of the Customs Act, 1962.

51. I imposed personal penalty of Rs.15,00,000/- (Rupees Fifteen Lakh Only) on Shri Kanchan Agarwal and Rs.2,00,000/- (Rupees Two Lakh Only) each on S/Sh. Rajendra Kumar Verma and Bharat @ Bharat Singh under section 112(b) of the Customs Act, 1962.”

5. The OIO was then challenged before CESTAT, and a stay was granted, subject to the Appellant depositing Rs.5,00,000/- as pre-deposit *vide* order dated 29th April, 1998. However, the Appellant could not make the said pre-deposit.
6. Thereafter, extension for making the pre-deposit was also granted by this Court in ***W.P.(C) 4440/1998*** titled '***Kanchan Lal Aggarwal vs. Commissioner of Customs & Anr.***' on 25th February, 1999. Within the said extended period also, the pre-deposit was not made by the Appellant.
7. The Appellant, being aggrieved by the limited relief granted in ***W.P.(C)***



4440/1998, had challenged the same before the Supreme Court in **SLP (Civil) No. 8014/1999** titled '**Kanchan Lal Aggarwal vs. Commissioner of Customs & Anr.**', (hereinafter, '**first SLP**') and the same was dismissed as withdrawn. The order reads as under:

"Upon hearing counsel the court made the following

O R D E R

The Special Leave Petition is dismissed as withdrawn."

8. Thereafter, since the Appellant could not make the pre-deposit within the time allowed, *vide* order dated 16th August, 1999, the CESTAT dismissed the appeal on the ground that the pre-deposit was not made.

9. The Appellant had then filed an application seeking permission for restoration of the appeal and to make the pre-deposit. However, the said application was also dismissed on 26th February, 2007 by the CESTAT.

10. The said dismissal of the restoration application was challenged by the Appellant before the Allahabad High Court in **Writ Tax No. 562/2007** titled '**Kanchan Lal Aggarwal v. Commissioner of Customs**' and Supreme Court in **SLP (Civil) No. 19590/2007** titled **Kanchan Lal Aggarwal v. Commissioner of Customs** (hereinafter, '**second SLP**'). However, both the writ petition and the second SLP were dismissed on 9th May, 2007 and 29th October, 2007 respectively. The order dated 29th October 2007 passed by Supreme Court is extracted below:

11. The Appellant has again filed a third application for restoration of the appeal, almost 13 years after the second SLP was dismissed, which was again rejected by the CESTAT *vide* the impugned order dated 18th September, 2024. Aggrieved by the same, the Appellant has preferred the present appeal.



12. On 14th November, 2025, notice was issued in this matter and accepted by Mr Aditya Singla, Id. SSC. The Court, on the said date, has observed as under:

“15. The Court is clearly not inclined to entertain the present appeal. However, considering that the quantity of silver was substantial, the Court intends to ascertain from the Customs Department, as to whether the said silver has been disposed of or not, and if so, what was the value recovered.

16. Let the Id. SSC for the Respondent obtain instructions in this regard.”

13. Accordingly, Id. SCC has now made a submission that the 702.78 kgs silver is lying in the godown of the Customs Department and has not been disposed of.

14. The Court notes that unfortunately, the Appellant has not had an opportunity to argue the matter on merits before the CESTAT due to non-payment of pre-deposit. The case of the Appellant is that due to precarious financial conditions, the pre-deposit could not be paid on time.

15. Mr Aditya Singla, Id. SSC, however, submits that the Appellant has had two rounds before different High Courts and also two rounds before the Supreme Court. Hence, it is his submission that the Appellant does not deserve any more opportunities and thus, the present appeal shall not be entertained.

16. The Court has heard the parties and considered the matter.

17. The chronology of events would show that though the first SLP filed by the Appellant was dismissed as withdrawn, the second SLP filed against the order of the Allahabad High Court, was dismissed after being heard. The order of the Allahabad High Court in ***Writ Tax No. 562/2007*** titled '***Kanchan***



Lal Aggarwal v. Commissioner of Customs' and Supreme Court in second SLP are extracted below:

Order dated 9th May, 2007 in Writ Tax No. 562/2007

"1. Heard Mr. Bhatia, learned counsel appearing for the petitioner and Mr. Ajay Bhanot, learned counsel appears for the respondents.

2. The premises of the petitioner was searched way back in August, 1991 and certain excess quantity of silver was confiscated. He was issued a show cause notice which led to adjudication. He ultimately filed an appeal to the Customs, Excise & Gold (Control) Appellate Tribunal. By an order passed on 28th April, 1998 as modified vide order dated 7.8.1998, the Tribunal gave time upto 9th September, 1998 to the appellant/petitioner to make a pre-deposit of Rs. 5 lacs. That order, passed under Section 129-E of the Customs Act, was carried in a writ petition to the Delhi High Court. The Delhi High Court while dismissing the petition granted time upto April, 1999 to deposit the said amount and an SLP filed before the Supreme Court was withdrawn on 14th July, 1999. As a result thereof, the order of the Tribunal passed earlier became final. The petitioner did not deposit the amount within the time which was available to him, i.e. upto April, 1999, Consequently, his appeal in the Tribunal stood dismissed.

3. Now after so many years, the petitioner has filed an application dated 2nd February, 2007 to the Customs, Excise & Service Tax Appellate Tribunal, New Delhi submitting that he has now arranged an amount of Rs. 5 lacs, that this amount be received and the appeal may be consequently restored. This application has been dismissed by the Tribunal by order passed on 15th March, 2007 and therefore this petition.

4. Mr. Bhatia, learned counsel for the petitioner drew our attention to a judgement of a Division Bench of the Gujarat



High Court in Hussain Haji Harun alias Hussein Kabiju vs. Union of India and others reported at AIR 1988 GUJARAT 218 where the question concerning the powers of the Tribunal under the relevant Section to restore appeals after dismissal were examined. The Division Bench undoubtedly has held that the Tribunal has jurisdiction to entertain the appeal by setting aside its own orders and restore them on account of non deposit of the penalty or duty demanded. There is no difficulty as far as the proposition is concerned. What is to be noted in that case is that the petitioner had been directed to deposit an amount of Rs. 1 lac and a period of two months' time was granted by order dated 15.4.1985. Since the deposit was not made, the appeal stood dismissed. The petitioner in that matter, however, moved an application without much delay being application no. 36 of 1986 to set-aside the order dated 20th December, 1985 whereby the Tribunal recorded that the appeal stood dismissed on account of non deposit. This application was dismissed by the Tribunal by its order dated 26.8.1987 and then the matter was carried to the High Court. Thus. as can be seen from the facts whereas the Tribunal had granted the time by its order dated 15.4.1985, on 20th December, 1985 the Tribunal recorded that the appeal stood dismissed on account of non deposit and it appears that within a few months thereafter the application for restoration has been made.

5. In the present case, as has been seen from the facts, it was way back in the year 1998 that the order had been passed by the Tribunal and the period available to the petitioner was upto April, 1999. After a long period of about eight years, the application has been made to the Tribunal to receive the amount of pre-deposit, which now the petitioner has deposited, i.e. Rs. 5 lacs. Certainly, such an application could not have been entertained and in our view, the Tribunal was right in dismissing the appeal.

6. The petition stands dismissed.”



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Order dated 29th October, 2007 in SLP (Civil) No. 19590/2007

“The Special Leave Petition is dismissed.”

18. In view of the fact that the Allahabad High Court had already rejected this very prayer that has been sought in the present appeal and the matter has been dismissed by the Supreme Court, this Court is of the view that this appeal cannot be entertained at this stage.

19. The Court, initially, at first blush, was inclined to entertain the matter on the ground that the value of the seized silver, as per the Appellant is more than Rs. 10 crores and the same is lying with the Customs Department and only due to failure to pay the pre-deposit of Rs.5,00,000/-, the appeal could not be heard by the CESTAT. However, in view of the fact that the second SLP was entertained and dismissed by the Supreme Court, the Court is not inclined to exercise its jurisdiction under Article 226 of Constitution of India.

20. Needless to add, if the Appellant wishes to approach the Supreme Court, they are free to do so, in accordance with the law.

21. In view of the above, the present Appeal along with pending applications stand disposed of.

**PRATHIBA M. SINGH
JUDGE**

**SHAIL JAIN
JUDGE**

DECEMBER 10, 2025

Pallavi/ss