OD -6

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/161/2025

NAVEEN GOEL
VS
CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL EASTERN ZONAL BENCH KOLKATA AND ORS

BEFORE:
The Hon'ble JUSTICE OM NARAYAN RAI
Date : February 10, 2026.

Appearance :
Mr. Rishi Raju, Adv.
Ms. Shreya Mundhra, Adv.
...for the petitioner

Ms. Manasi Mukherjee, Adv.
Mr. Bijitesh Mukherjee, Adv.
...for the respondents

The Court: This writ petition is principally directed against an order dated August 9, 2024 whereby the petitioner's appeal before the Customs, Excise and Service Tax Appellate Tribunal, Kolkata (hereafter "CESTAT") was dismissed on the ground of not fulfillment of the statutory condition of pre-deposit.

Initially, an order in original dated July 14, 2014 was passed against the petitioner (as also his brother and a company named M/s. Beriwala Impex

Private Limited). The said order in original was sought to be assailed by filing a writ petition being WP No. 1181 of 2014 before this Court. The writ petition was dismissed by an order dated September 22, 2016 observing as follows:-

> *" It appears from the narration in the impugned order that, the petitioner had made a voluntary statement under Section 108 of the Customs Act before the Custom Authorities. It also appears from such narration that, the show cause notice to the petitioner was issued to the local address of the petitioner as known to the Custom Authorities. The petitioner claims to derive knowledge of the impugned order from a conversation that, the petitioner claims to have had with his father at such local address. Apparently the father of the petitioner has received the impugned order. From the narration of events as here, the irresistible conclusion is that, the petitioner was served with the show cause notice at the local address given by the petitioner to the Custom Authorities. It also appears that, the petitioner was aware of the proceeding being undertaken by the Custom Authorities in view of the fact that, the petitioner and his brother had made voluntary statements before the Custom Authorities. The petitioner therefore being well aware of the proceedings had chosen not to participate therein. The plea of breach of principles of natural justice is therefore, not available to the petitioner. The petitioner has not established that, any fundamental right of the petitioner has been infringed by the Custom Authorities or that, any of the grounds on which a writ petition is maintainable despite availability of an alternative remedy has happened warranting the High Court to intervene.*
>
> *The impugned order is appealable under Section 129(e) of the Customs Act, 1962.*
>
> *In such circumstances, the W.P. NO.1181 of 2014 is dismissed. Interim orders, if any, stand vacated. No order as to costs."*

The said order was carried in appeal before the Hon'ble Division Bench.

The said appeal being APO/308/2016 was dismissed by an order dated December 20, 2019 observing as follows:-

"It is submitted on behalf of the writ petitioner-appellant that a huge amount has been levied as penalty and it would not be possible for the writ petitioner to put up the statutory deposit and avail of the statutory remedy.

Ordinarily, the requirement of a statutory deposit as a pre-condition to the filing of an appeal is not accepted as a ground not to avail of the regular remedy and approach the writ Court instead. It is elementary that an appeal is a creature of statute and any conditions imposed in the exercise of the right of appeal need necessarily to be complied with to avail of such remedy.

In any event, upon this Court enquiring of the appellant as to whether the quantum of penalty imposed could have been legally done, it is submitted that the penalty imposed was illegal. However, it appears that the relevant authority had due jurisdiction to impose the quantum of penalty imposed in this case.

In the light of the aforesaid and since the order impugned herein does not reveal the consideration of any irrelevant material and does not otherwise appear to be perverse, such order cannot be interfered with and the same is affirmed.

APO NO.308 of 2016 with GA No.818 of 2017 are dismissed.

There will be no order as to costs."

After the appellate order dated December 20, 2019, being passed, the petitioner approached CESTAT by filing an appeal under Diary No. 75082/2020.

However, the petitioner did not put in the required statutory pre-deposit. Since the requisite statutory pre-deposit was not put in by the petitioner, CESTAT did not entertain the appeal and ultimately, by an order dated August 9, 2024, CESTAT dismissed the appeal observing as follows:-

> *"These Appeals pertained to the year 2020. The Appellants have not fulfilled their pre-deposit condition.*
>
> *2. The Ld.Advocate submits that the penalties imposed on these Appellants is very high amounting to about Rs.23.00 crores on each of the Appellant and prays that a lenient view may be taken.*
>
> *3. We find that in terms of Section 35F, there is no scope for any leniency or to take any other view other than what has been statutorily provided for. Statute requires that the Appellant should deposit 7.5%/ 10% of the litigated amount when they file their Appeal before the Tribunal.*
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> *4. In this case during the last four years the Appellants have not been able to fulfill this condition. Therefore, we dismiss the Appeals at the diary stage itself on this ground."*

Upon the said appeal being dismissed, the petitioner has now approached this Court by way of the present writ petition.

It is the petitioner's case that the order in original dated July 14, 2014 had been challenged by the company i.e. M/s. Beriwala Impex Private Limited before CESTAT and that during pendency of the appeal, CESTAT has allowed the said appeal by an order dated February 23, 2022 thereby holding that the entire proceeding initiated against the company was without jurisdiction.

Mr. Raju, learned Advocate appearing for the petitioner, in his usual fairness, hands up to Court a copy of an order dated January 22, 2026 passed by the Hon'ble Supreme Court in Civil Appeal No. 6142 of 2019 (*Union of India and Ors vs. Aspam Petrochem Private Limited*) and submits that along with the aforesaid appeal, a challenge thrown by the Revenue, to the order dated February 23, 2022 passed by CESTAT in favour of M/s. Beriwala Impex Private Limited was also taken up and that the matter has ultimately been remanded to CESTAT for fresh consideration.

Mr. Raju submits that since the appeal filed by the company is now pending consideration before CESTAT upon remand therefore this writ petition should be kept pending till such time the appeal is decided by CESTAT upon remand. It is submitted that if CESTAT holds in favour of the company thereby setting aside the order imposing penalty on the company, the petitioner's case could also be decided in the light thereof.

It is further submitted by Mr. Raju that since the company i.e. M/s. Beriwala Impex Private Limited has already paid the entire duty imposed on the company by the order in original, the petitioner may be required to deposit only such amount as pre-deposit as would be remaining upon adjusting the sums paid by the said company on account of the duty imposed by the order in original with the amount required to be put in by the petitioner as statutory pre deposit.

Ms. Mukherjee, learned advocate appearing for the respondent Customs Authorities submits that such a course is simply not permissible in the facts of the present case. It is submitted that once the Hon'ble Division Bench has left the petitioner free to approach CESTAT by way of statutory appeal upon declining the petitioner's prayer for consideration of relaxation of condition of pre deposit, the same prayer cannot be renewed by the petitioner once again.

It is further submitted by Ms. Mukherjee that the liabilities of the said company and the petitioner are separate in terms of the order in original and therefore payment of duty by the said company cannot be utilized by the petitioner for reducing the amount required to be put in by the petitioner as statutory pre deposit in terms of the relevant provisions of the Customs Act, 1962. It is submitted that the petitioner would have to make the pre deposit in accordance with the quantum of penalty imposed on the petitioner by the order in original. It is further submitted that since imposition of penalty and order for payment of duty are two different aspects, therefore, the petitioner cannot take advantage of payment of duty by the said company.

Heard learned advocates appearing for the respective parties and considered the material on record. It is evident that earlier, when the matter had been taken up by the Hon'ble Division Bench, it had been submitted before the Hon'ble Division Bench on behalf of the petitioner that as it would not be possible for the petitioner to put in the statutory pre deposit and avail the statutory remedy therefore the petitioner should be permitted to challenge the order in original before this Court. Such contention of the petitioner was repelled and negated by the Hon'ble Division Bench by observing that *"an appeal is a creature of statute and any condition imposed in the exercise of the right of appeal need necessarily be complied with to avail of such remedy"*.

Accepting such order of the Hon'ble Division Bench, the petitioner approached CESTAT and filed the appeal. However, the petitioner could not comply with the condition of pre deposit and such failure led to the dismissal of the petitioner's appeal. That, in the considered view of the Court, cannot clothe the petitioner with any fresh right to approach the Writ Court and seek relaxation of condition of pre deposit in whatever manner.

Furthermore, it is not the petitioner's case that the company paid the duty subsequent to the order passed by the Hon'ble Division Bench and that being so, there is no change in circumstances also. The party continues to be at the same place and in the same position where the party was at the time when the Hon'ble Division Bench decided the petitioner's appeal. Above all, there is no provision in the statute that permits any appropriation or adjustment of payments made by a party in terms of an order in original with statutory pre deposit required to be made by another person for the purpose of filing or maintaining such other person's appeal.

This Court is therefore unable to accede to the petitioner's request.

Indeed the petitioner cannot be permitted to do exactly that indirectly what it was disallowed to do directly by the Hon'ble Division Bench of this Court i.e. to challenge the order in original before this Court under Article 226 of the Constitution of India.

In such view of the matter, WPO/161/2025 cannot be entertained. The same is dismissed without any order as to costs.

It is however clarified that this order of dismissal shall not prevent the petitioner from approaching CESTAT with a prayer seeking condonation of delay and restoration of its appeal upon putting in the requisite statutory pre deposit in accordance with law. If such application is made, CESTAT would be free to decide the same in accordance with law.

[OM NARAYAN RAI, J.]

Kc / R. D. Barua