Reserved on : 18.09.2025
Pronounced on : 07.11.2025

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.13082 OF 2025 (T - CUS)

BETWEEN:

M/S.PARISONS FOODS PRIVATE LIMITED
INCORPORATED UNDER SECTION 16(2) OF
COMPANIES ACT, 1956
6/1183, KUNHIPARI BUILDING
CHEROOTTY ROAD, KOZHIKODE
KERALA – 673 032
REPRESENTED BY ITS DIRECTOR
MR.N.K.HARIS.

... PETITIONER

(BY SRI PRABHULING K.NAVADGI SR.ADVOCATE FOR
SRI PARAMESH KUMAR H.K., ADVOCATE)

AND:

1 . THE COMMISSIONER OF CUSTOMS
OFFICE OF THE COMMISSIONER OF CUSTOMS
NEW CUSTOMS HOUSE, PANAMBUR
MANGALURU – 575 010.

2 . THE CUSTOMS EXCISE AND SERVICE
TAX APPELLATE TRIBUNAL (CESTAT)
WTC, 1ST FLOOR, FKCCI COMPLEX
K.G.ROAD
BENGALURU – 560 009.

... RESPONDENTS

(BY SRI ARAVIND V.CHAVAN, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT IN THE NATURE OF CERTIORARI OR MANDAMUS AS CONSIDERED APPROPRIATE TO THE R-2 TO REFRAIN FROM INSISTING ON PRE-DEPOSIT AMOUNT UNDER SECTION 129E(ii) OF THE CUSTOMS ACT, 1962 AND ADMIT THE APPEAL AGAINST THE ORDER DATED 27.01.2025 (FILED HEREWITH AND MARKED AS ANNEXURE – C).

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.09.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

Petitioner is before this Court seeking a direction to the 2nd respondent-Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as the 'CESTAT') not to insist upon pre-deposit amount under Section 129E(ii) of the Customs Act, 1962 (hereinafter referred to as the 'Act' for short).

2. Facts in brief, germane, are as follows:

2.1. The petitioner (hereinafter referred to as the 'Company' for short), is said to be engaged in the business of refining edible oils. It is the case of the petitioner that, for the purpose of business, it has to import materials from Indonesia and Malaysia and other members of the members of the Association of the South East Asian Nations (ASEAN) since India had entered into India-ASEAN Preferential Tariff Agreement/Free Trade Agreement, known as Comprehensive Economic Cooperation Agreement. The petitioner claims that it is thus entitled to benefits provided under the aforesaid agreement, as well as benefits provided under the Act. The petitioner imports goods through Mangalore Port and also has storage tanks for receiving the imported cargo in Mangalore. The petitioner is also said to be a regular importer of crude palm oil, falling under tariff item (CTI) 1511 10 00 of the First Schedule to the Customs Tariff Act, 1975 from Indonesia and Malaysia for manufacturing of final product. The petitioner, in terms of the aforesaid agreement, had availed the benefit of exemption from

basic customs duty under Sl.No.3 of the Notification No.48/2021-Customs dated 13-10-2021 (hereinafter referred to as 'Exemption Notification') and the petitioner pays Agriculture Infrastructure and Development Cess (AIDC) at the rate of 5% in terms of Sl.No.2 of the Notification No.49/2021-Customs for the said imports.

2.2. On and from the month of June 2022, export of crude palm oil is said to have been banned in Indonesia. The petitioner for the purpose of continuing the business, decides to import crude palmolein, which is claimed to be a byproduct or a fraction of crude palm oil from Indonesia. The petitioner imports 7 consignments of crude palmolein between the periods 17-06-2022 and 05-01-2023. For the said purpose of import, an import general manifest specifying the description of goods, number and date of bill of lading and the quantity of said goods was filed by the vessel agent prior to the arrival of the vessel consignment. Samples of imported goods/crude palmolein were taken both by the petitioner, as well as the Customs Authorities to determine the nature of the imported goods, i.e., edible oil or non-edible oil. Samples were then sent for scientific examination to the Food Safety and Standards Authority

of India (FSSAI) for identifying the nature of the imported goods. The test reports provided by the FSSAI is said to have confirmed that the goods imported by the petitioner are crude palmolein and the same is in the nature of, 'other than refined, bleached and deodorized'. The test report obtained by the petitioner through a private laboratory is said to be in conformity with the findings of the FSSAI.

2.3. Such proceedings were conducted upon the premises of the petitioner by the Directorate of Revenue Intelligence in terms of Section 105 of the Act on the score that crude palmolein cannot be exempted from payment of basic customs duty. The search proceedings culminated in issuance of a show cause notice on 16-01-2024 to the petitioner seeking to show cause as to why customs duty should not be imposed upon the petitioner holding that the crude palmolein cannot be exempted from basic customs duty in terms of the exemption notification. The show cause notice proposed to demand differential basic customs duty under Section 28(4) of the Act along with interest and penalty quantified at Rs.488,14,60,120.

2.4. The petitioner-assessee submits his reply to the said notice contending that crude palmolein is a fraction or a byproduct of crude palm oil and is classifiable under tariff item 1511 10 00, as provided under the First Schedule to the Customs Tariff Act. The petitioner contended that he cannot be subjected to payment of basic customs duty. The assessee further claim that he is eligible only to pay a concessional rate of duty, as provided under the Comprehensive Economic Co-operation Agreement. The 1st respondent denies the claim of the assessee, holds that crude palmolein cannot be exempted under the Exemption Notification, since it only covers crude palm oil and therefore, the assessee was directed to pay the differential basic customs duty at Rs.416,87,71,557 in terms of Section 28(1) of the Act r/w Section 5(1) of the Integrated Goods and Serves Tax Act, 2017 ('IGST' Act) along with interest and penalty. The aforesaid are the contents of the order in original.

2.5. The petitioner-assessee prefers an appeal before the 2nd respondent-CESTAT challenging the Order-in-Original dated 27-01-2025. In terms of Section 129-E(ii) of the Act, the assessee

is required to deposit 7.5% of the duty demanded, which will not exceed Rs.10 crores. The assessee is now at the doors of this Court seeking waiver of the payment of deposit stipulated under Section 129-E(ii) of the Customs Act and admit the appeal without the mandatory pre-deposit amount.

3. Heard Sri Prabhuling K Navadgi, learned senior counsel appearing for petitioner and Sri Aravind V Chavan, learned counsel appearing for respondents.

4. The learned senior counsel for the petitioner Sri Prabhuling K Navadgi submits that the 1st respondent has erroneously interpreted the exemption notification and has subjected the petitioner/assessee to payment of differential basic customs duty; the pre-deposit amount renders the appellate remedy inaccessible and therefore, the remedy is rendered illusory; the mandatory pre-deposit requirement treats all appellants uniformly, irrespective of their financial capacity or the merits of the case; the rigid application of the mandatory pre-deposit requirement fails to account for businesses or individuals that undergo genuine

hardship. It is his submission that the pre-deposit requirement infringes upon Articles 19(1)(g) and 21 of the Constitution of India and is therefore, arbitrary, as it jeopardizes the business of the petitioner. He would seek to place reliance upon the judgments rendered by the Apex Court and of the different High Courts on the issue, all of which would bear consideration *qua* their relevance in the course of the order.

5. Contrariwise, learned counsel for the respondents Sri Aravind V Chavan would contend that the waiver of pre-deposit sought by the assessee would dilute the legislative mandate. The delicate balance between the rights of the tax payer and the protection of the revenue would be lost, if the plea of the petitioner is entertained. The learned counsel would submit that the pre-deposit requirement does not infringe upon the fundamental rights of the assessee, as it is not arbitrary. He would submit that the Apex Court in several judgments has indicated that the legislative intent of the amendment to Section 129-E of the Act is, not to allow the benefit of discretionary proviso, so that the appellant would pay only a fraction in the guise of exercise of discretion. The 2014

amendment to the Act fixes the pre-deposit requirement with no discretion to the Appellate Tribunal. The learned counsel submits that the assessee has misinterpreted the exemption notification, since the exemption is available only to crude palm oil and not crude palmolein. He would seek dismissal of the petition in defence of the order impugned.

6. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties and have perused the material on record.

7. The afore-narrated facts are not in dispute. The issue that has driven the petitioner to this Court is, the claim of waiver of the mandatory pre-deposit for entertainment of an appeal under Section 129-E of the Act. To consider the said issue, the facts need not bear iteration, as they are all a matter of record. Since the crux lies in claim for waiver, it is necessary to notice Section 129-E of the Act, it reads as follows:

> **"Section 129-E. 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 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 percent 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."

(Emphasis supplied)

Section 129-E mandates deposit of certain percentage of duty demanded or penalty imposed before filing an appeal. The Tribunal or the Commissioner of Appeals shall not entertain the appeal against a decision made under Section 128(1), unless the appellant

has deposited 7.5% of the duty. The proviso to Section 129-E mandates that the amount required to be deposited under Section 129-E would not exceed Rs.10 crores.

8. In the case at hand, the Order-in-Original dated 27-01-2025, while denying the claim of the assessee, holds that crude palmolein cannot be exempted under the exemption notification, as the said notification covers only crude palm oil and the assessee is required to pay differential basic customs duty, as determined in the order in original. Therefore, the assessee seeking to file an appeal, must necessarily deposit, 7.5% of the amount determined in the order in original, which however shall not exceed Rs.10 crores.

9. The learned senior counsel for the petitioner has placed reliance upon two judgments, one of the Apex Court and the other of the High Court of Delhi. I deem it appropriate to notice the said judgments so relied on.

9.1. The Apex Court in the case of **SETH NAND LAL v. STATE OF HARYANA**[1] has held as follows:

> "**22. It is well settled by several decisions of this Court that the right of appeal is a creature of a statute and there is no reason why the legislature while granting the right cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory** (vide : the latest decision in *Anant Mills Ltd.* v. *State of Gujarat* [(1975) 2 SCC 175 : AIR 1975 SC 1234]). Counsel for the appellants, however, urged that the conditions imposed should be regarded as unreasonably onerous especially when no discretion has been left with the appellate or revisional authority to relax or waive the condition or grant exemption in respect thereof in fit and proper cases and, therefore, the fetter imposed must be regarded as unconstitutional and struck down. It is not possible to accept this contention for more than one reason. In the first place, the object of imposing the condition is obviously to prevent frivolous appeals and revision that impede the implementation of the ceiling policy; secondly, having regard to sub-sections (8) and (9) it is clear that the cash deposit or bank guarantee is not by way of any exaction but in the nature of securing mesne profits from the person who is ultimately found to be in unlawful possession of the land; thirdly, the deposit or the guarantee is correlated to the landholdings tax (30 times the tax) which, we are informed, varies in the State of Haryana around a paltry amount of Rs 8 per acre annually; fourthly, the deposit to be made or bank guarantee to be furnished is confined to the landholdings tax payable in respect of the disputed area i.e. the area or part thereof which is declared surplus after leaving the permissible area to the appellant or petitioner. Having regard to those aspects, particularly the meagre rate of the annual land-tax payable, the fetter imposed on the right of appea1/revision, even in the absence of a provision conferring discretion on the appellate/revisional authority to relax or waive the condition,

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[1] **1980 Supp SCC 574**

> cannot be regarded as onerous or unreasonable. The challenge to Section 18(7) must, therefore, fail."
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> (Emphasis supplied)

The Apex Court holds that the conditions imposed for exercising the statutory remedy of appeal cannot render the remedy of appeal illusory.

9.2. Learned senior counsel places reliance upon the judgment of the High Court of Delhi, rendered in the case of **PIONEER CORPORATION V. UNION OF INDIA[2],** wherein it is held as follows:

> **"5.** In the present case, the adjudication order has confirmed the demand against the petitioner in the sum of Rs. 2,82,49,444/- and a penalty of the equal amount. Further the case of the petitioner is that in view of the financial hardship of the petitioner, this Court should in exercise of its powers under Article 226 of the Constitution waive the requirement of pre-deposit. **Mr. Sachin Datta drew the attention of the Court to the following lines in Para 9 of the decision of the Allahabad High Court in *Ganesh Yadav* in support of the above plea**:
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> > "9. **Parliament while amending the provisions of Section 35F of the Act has required the payment of 7.5 per cent. of the duty in case the duty and penalty are in dispute or the penalty where such penalty is in dispute. In the case of an appeal to the Tribunal against an order passed by the Commissioner (Appeals), the requirement of**

[2] **2016 SCC OnLine Del 6758**

deposit is 10% of the duty or as the case may be, the duty or penalty or of the penalty where the penalty is in dispute. The first proviso restricts the amount to be deposited to a maximum of Rs. 10 crores. Prior to the amendment, the Commissioner (Appeals) or the Appellate Tribunal were permitted to dispense with such deposit in a case of undue hardship subject to such conditions as may be imposed so as to safeguard the interest of the revenue. Stay applications and the issue of whether a case of undue hardship was made out, gave rise to endless litigation. There would be orders of remand in the litigative proceedings. All this was liable to result in a situation where the disposal of stay applications would consume the adjudicatory time and resources of the Tribunal or, as the case may be, of the Commissioner (Appeals). Parliament has stepped in by providing a requirement of a deposit of 7.5% in the case of a First Appellate remedy before the Commissioner (Appeals) or to the Tribunal. The requirement of a deposit of 10% is in the case of an appeal to the Tribunal against an order of the Commissioner (Appeals). This requirement cannot be regarded or held as being arbitrary or as violative of Article 14. Above all, as the Supreme Court held in *Shyam Kishore* (supra), the High Court under Article 226 of the Constitution is vested with the jurisdiction in an appropriate case to dispense with the requirement of pre-deposit and the power of the Court under Article 226 is not taken away. This was also held by the Supreme Court in *P. Laxmi Devi* (supra) in which the Supreme Court observed that recourse to the writ jurisdiction would not be ousted in an appropriate case. Whether the writ jurisdiction under Article 226 should be exercised, having due regard to the discipline which has been laid down under Section 35F of the Act, is a separate matter altogether but it is important to note that the power under Article 226 has not been, as it cannot be, abridged."

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9. Under Section 35F of the CE Act as it stood prior to 6th August, 2014, a discretion was available to the

> **CESTAT to consider the financial hardship and accordingly determine the pre-deposit amount. That discretion has been consciously sought to be curtailed and thus an amendment was made to Section 35F of CE Act requiring making of a pre-deposit of 7.5% in all cases subject to an upper cap of Rs. 10 crores. A direction, therefore, to the CESTAT that it should waive the pre-deposit would be contrary to the express legislative intent expressed in the amended Section 35F with effect from 6th August, 2014. While, the jurisdiction of the High Court under Article 226 of the Constitution to grant relief notwithstanding the amended Section 35F cannot possibly be taken away, the Court is of the view that the said power should be used in rare and deserving cases where a clear justification is made out for such interference.** Having heard the submissions of Mr. Datta and having perused the adjudication order, the Court is not persuaded to exercise its powers under Article 226 to direct that there should be a complete waiver of the pre-deposit as far as the petitioner's appeal before the CESTAT is concerned."

(Emphasis supplied)

The High Court of Delhi considers the issue regarding whether pre-deposit can be waived and holds that allowing such waiver would be contrary to the mandate of the legislation. Waiver of pre-deposit may be allowed in rare and deserving cases, where clear justification is made out. The purport of the statute cannot be diluted by a stroke of pen by this Court, on the specious plea of the senior counsel for the petitioner that in appropriate cases discretion must be exercised by this Court to waive the deposit amount. This Court shall not exercise its jurisdiction unless a rare and deserving

case is demonstrated. The said submission, as observed, would become unacceptable, in the light of the fact of subsequent judgments of the Apex Court which considers the very issue.

10.1. The Apex Court in the case of **CHANDRA SEKHAR JHA V. UNION OF INDIA**[3], has held as follows:

> **"7. On a conspectus of the provisions of Section 129-E before and after the substitution, it becomes clear that the lawgiver has intended to bring about a sweeping change from the previous regime and usher in a new era, under which the amount to be deposited was scaled down and pegged at a certain percentage of the amount in dispute. In other words, while under Section 129-E, as it stood prior to the substitution, the appellant was to deposit the duty and the interest demanded or the penalty levied, in the present regime, the appeal is maintainable upon the appellant depositing seven-and-a-half per cent of the amount. Under the earlier regime, in other words the entire amount which was in dispute had to be deposited.** Under the earlier avatar of Section 129-E, the lawgiver also clothed the appellate body with power as contained in the first proviso. The first proviso provided the Commissioner (Appeals) or as the case may be, Appellate Tribunal the power to dispense with such deposit, subject to conditions as he deemed fit to impose to safeguard the interest of the Revenue.
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> **8.** The question whether it is undue hardship has been the subject-matter of the judgment of this Court in *Benara Valves Ltd.* v. *CCE* [*Benara Valves Ltd.* v. *CCE*, (2006) 13 SCC 347] , wherein it, inter alia, held as follow : (SCC p. 352, para 13)

[3] **(2022)14 SCC 152**

> "*13*. For a hardship to be "undue" it must be shown that the particular burden to observe or perform the requirement is out of proportion to the nature of the requirement itself, and the benefit which the applicant would derive from compliance with it."

9. It is in sharp departure from the previous regime that the new provision has been enacted. Under the new regime, on the one hand, the amount to be deposited to maintain the appeal has been reduced from 100% to 7.5% but the discretion which was made available to the appellate body to scale down the pre-deposit has been taken away.

10. The first proviso of Section 129-E of the present section enacts a limitation on the total amount which can be demanded by way of pre-deposit. The first proviso provides that the amount required to be deposited should not exceed Rs 10 crores. In this regard, the lawgiver has purported to grant relief to an appellant. The second proviso contemplates that Section 129-E as substituted would not apply to stay applications and appeals which are pending before the appellate authority prior to the commencement of the Finance Act (No. 2) of 2014. The amended provision, as we have already noticed has come into force from 6-8-2014. Therefore, in regard to stay applications and appeals which were pending before any appellate authority prior to commencement of the Finance Act (No. 2) of 2014, Section 129-E as substituted would not apply. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. [*See* in this regard, a discussion in Justice G.P. Singh, *Principles on Statutory Interpretation* (12th Edn.) p. 676.]

11. As far as the argument of the appellant that for the reason that the incident which triggered the appeal filed by the appellant took place in the year 2013, the appellant must be given the benefit of the power available under the substituted provision, it does not appeal to us. The substitution has effected a repeal and it has re-enacted the provision as it is contained in Section 129-E. In fact, the acceptance of the argument would involve a dichotomy in law. On the one hand, what the appellant is called upon to pay is not the full amount as is contemplated in

> Section 129-E before the substitution. The order passed by the Commissioner is dated 23-11-2015 which is after the substitution of Section 129-E. The appellant filed the appeal in 2017. **What the appellant is called upon to pay is the amount in terms of Section 129-E after the substitution, namely, the far lesser amount in terms of the fixed percentage as provided in Section 129-E. The appellant, however, would wish to have the benefit of the proviso which, in fact, appropriately would apply only to a case where the appellant is maintaining the appeal and he is called upon to pay the full amount under Section 129-E under the earlier avtar.**
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> **12. We would think that the legislative intention would clearly be to not to allow the appellant to avail the benefit of the discretionary power available under the proviso to the substituted provision (*sic* pre-substitution provision) under Section 129-E. When the appellant is not being called upon to pay the full amount but is only asked to pay the amount which is fixed under the substituted provision, we do not find any merit in the contention of the appellant.** However, in the interest of justice we extend the period for complying with Section 129-E by a period of two months from today. Subject to the same, the appeal will stand dismissed."
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> (Emphasis supplied)

10.2. The Apex Court, in the case of **KOTAK MAHINDRA BANK PRIVATE LIMITED V. AMBUJ A KASLIWAL**[4]**,** while adjudicating with regard to the pre-deposit before the Debt Recovery Appellate Tribunal, has held as follows:

> **"16.** Thus, when prima facie it was taken note of by the DRAT that further amount was due and the pre-deposit was ordered, without finding fault with such conclusion the High

[4] **(2021)3 SCC 549**

Court was not justified in setting aside the orders passed by the DRAT. As noted from the extracted portion of the order passed by the High Court, all that the High Court has concluded is that the benefit of the receipt of Rs 152,81,07,159 (Rupees one hundred fifty-two crores, eighty-one lakhs, seven thousand, one hundred and fifty-nine) as against the decretal amount cannot be denied though it was received before passing of the final judgment. Such conclusion in any event could not have tilted the balance in favour of Respondents 1 and 2 to waive the entire pre-deposit, unless the High Court had rendered a categorical finding that the entire decretal amount stands satisfied from such receipt and there was no debt due which in any event was beyond the scope of consideration in a petition of the present nature. On the other hand, as stated, the DRAT having taken note of the decretal amount, the receipt of the amount credited as compensation and, having further noted the debt is still due, has directed the pre-deposit limited to that extent.

17. Therefore, in the facts and circumstances arising herein, when further amount is due and payable in discharge of the decree/recovery certificate issued by the DRT in favour of the appellant Bank, the High Court does not have the power to waive the pre-deposit in its entirety, nor can it exercise discretion which is against the mandatory requirement of the statutory provision as contained in Section 21, which is extracted above. In all cases fifty per cent of the decretal amount i.e. the debt due is to be deposited before the DRAT as a mandatory requirement, but in appropriate cases for reasons to be recorded the deposit of at least twenty-five per cent of the debt due would be permissible, but not entire waiver. Therefore, any waiver of pre-deposit to the entire extent would be against the statutory provisions and, therefore, not sustainable in law. The order of the High Court is, therefore, liable to be set aside.

*** *** ***

19. Having arrived at the above conclusion the issue is also with regard to the extent to which pre-deposit is to be ordered in the instant case. Though the learned Senior Advocates on either side have indicated different figures as the

> actual debt due as on today, we do not propose to enter into that aspect of the matter since the actual amount due is a matter which would be taken note of by the DRAT while considering the appeal on merits and at the point of recovery if any, in the execution proceedings. However, for the present we would take note of the amount as indicated in the order dated 27-2-2019 passed by the DRAT. Hence, for the purpose of determining the pre-deposit, the decretal amount due is taken at Rs 68,18,92,841 (Rupees sixty-eight crores, eighteen lakhs, ninety-two thousand, eight hundred and forty-one).
>
> *** *** ***
>
> **21. As already noted, a total waiver would be against the statutory provisions.** However, in the instant case, taking note that though the issue relating to the actual amount due is to be considered by the DRAT, keeping in view the fact that the DRT has taken into consideration the earlier settlement and has accordingly decreed the claim to that extent and towards such decree since payment of a major portion is made, though by appropriation of the compensation amount and admittedly since the remaining properties belonging to Respondent 3 are available by way of mortgage and Respondents 1 and 2 are the personal guarantors, we deem it appropriate that in the peculiar facts and circumstances of this case to permit the pre-deposit of twenty-five per cent of the amount as taken note of by the DRAT i.e. twenty-five per cent of Rs 68,18,92,841 (Rupees sixty-eight crores, eighteen lakhs, ninety-two thousand, eight hundred and forty-one). To the said extent, the order dated 27-2-2019 passed by the DRAT on IA No. 511 of 2018 is liable to be modified."
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> (Emphasis supplied)

10.3 The High Courts of Delhi, Bombay and Gujarat, have in subsequent judgments, considered the issue of waiving pre-deposit. The Delhi High Court in the case of **MOHAMMED AKMAM UDDIN**

AHMED V. COMMISSIONER APPEALS CUSTOMS AND CENTRAL EXCISE & OTHERS[5] has held as follows:

> **"65.** The respondents have not placed on record any document in support of the value/price of the agarwood chips and agarwood oil which was "provisionally" valued at Rs 5,00,000 per kg and Rs 8,00,000 per kg respectively, to levy the penalty on the petitioners. **The OIO arrives at this valuation without any discussion on the price. The OIO also relies on the report of the Wildlife Inspector which also does not mention any price, but clearly mentions that there were different grades in the agarwood chips seized. No final report on the value/price of the variety of agarwood chips and agarwood oil seized is placed on record or even relied upon by respondents**.
>
> **66. The valuation of the goods seized, is also not in terms of the prices as set forth in the Government of Assam's agarwood policy. No proper calculation has been made for the penalty levied. The penalty imposed on the petitioners has been imposed based on a provisional valuation. The penalty imposed is therefore without any legal basis and cannot be sustained.**
>
> **67.** The principle enunciated in the judgments in *Pioneer Corpn. case* [*Pioneer Corpn.* v. *Union of India*, 2016 SCC OnLine Del 6758 : (2016) 340 ELT 63] , *Narender Yadav case* [*Narender Yadav* v. *Commr. of Customs*, 2019 SCC OnLine Del 12415] , *Shubh Impex case* [*Shubh Impex* v. *Union of India*, 2018 SCC OnLine Del 8793] , *Manoj Jha case* [*Manoj Kumar Jha* v. *DRI*, (2019) 365 ELT 166] and *Ganesh Yadav case* [*Ganesh Yadav* v. *Union of India*, 2015 SCC OnLine All 9174] is that the court has the power to exercise discretion to waive requirement of pre-deposit of penalty in "rare and deserving cases" where a clear justification is made out for interference. In *Narender Yadav case* [*Narender Yadav* v. *Commr. of Customs*, 2019 SCC OnLine Del 12415] , this Court had found that the order-in-original did not give any reasons for the penalty imposed on the petitioners and hence,

[5] **2023 SCC OnLine Del 2450**

was unwarranted. In *Shubh Impex case* [*Shubh Impex* v. *Union of India*, 2018 SCC OnLine Del 8793] , the court found that the condition of pre-deposit would completely disable and paralyse the business of the appellant and given the financial condition and background of the appellant would suffer financial breakdown and irreparable harm. In *Manoj Jha case* [*Manoj Kumar Jha* v. *DRI*, (2019) 365 ELT 166] it is held that since the petitioner has very limited means to deposit any amounts, the relief to him is warranted.

68. Admittedly, the petitioners are poor daily wage earners who are unable to make a challenge to the seizure and confiscation on account of the penalty imposed on them. The aforegoing discussion on the prices and valuation of agarwood chips and agarwood oil suggest, albeit, prima facie, that no proper valuation of the goods seized was carried out by the respondents.

69. The Allahabad High Court in *Ganesh Yadav case* [*Ganesh Yadav* v. *Union of India*, 2015 SCC OnLine All 9174] while upholding the constitutional validity of Section 35-F of the CE Act has enunciated that the statute may, at times, impose conditions as a requirement of filing an appeal. However, a condition which is unduly onerous will render the right to appeal as a nought. It was held that:

> "*3*. … As a first principle of law, a right of appeal is a statutory right and it is open to the legislature which confers a remedy of an appeal to condition the appeal subject to compliance with conditions. A fiscal legislation can stipulate a requirement of pre-deposit as a condition precedent to an appeal to be entertained. *The restraint on the power of the legislature to do so, is that the condition which is prescribed should not be so onerous so as to restrict or abrogate the right of appeal altogether*. A condition which is unduly onerous will render the right of appeal illusory and would hence, run the risk of being held to be arbitrary and of being violative of the fundamental right conferred by Article 14 of Constitution."
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> (emphasis supplied)

70. Therefore, given the financial position and the wherewithal of the petitioners, an opportunity needs to

> **be given to them to contest the valuation so imposed by the respondents, which, otherwise cannot be contested by them. Thus, we consider the case of the petitioners to be an appropriate case to exercise our discretion in the matter concerning waiver of pre-deposit of penalty.**"
>
> (Emphasis supplied)

10.4. The High Court of Bombay in the case of **LALIT KULTHIA v. COMMISSIONER OF CUSTOMS (APPEALS) MUMBAI III**[6], holds that pre-deposit before the CESTAT cannot be dispensed with in a petition filed under Article 226 of the Constitution of India. The Court observes as follows:

> "**5.** Ms. Soni's contentions on the merits are irrelevant, apart from the fact that they do not impress us much. Based on these contentions, an argument about the penalty being without jurisdiction cannot be sustained. In any event, we are not required to discuss the merits of this matter; therefore, we do not go into the merits of the matter.
>
> **6. The relief the Petitioners seek contradicts Section 129E of the Customs Act, which contemplates a pre-deposit. In *Kotak Mahindra Bank Pvt. Ltd.* v. *Ambuj A Kasliwal*, the Hon'ble Supreme Court has held that even the High Court should not direct the appellate authorities to admit and hear appeals unaccompanied by the minimum pre-deposit requirement under the statute. The Hon'ble Supreme Court held that discretion under Article 226 of the Constitution of India cannot be exercised against the mandatory requirement of statutory provision.**
>
> **7. In *Manjit Singh* v. *Union of India*, decided by the Coordinate Bench of this Court on 18 October 2022, relief**

[6] **2024 SCC OnLine Bom 3757**

of waiver of the minimum pre-deposit of 7.5% of the penalty under Section 129E of the Customs Act was declined. This decision considers all the contentions raised in this Petition and discusses earlier precedents on the subject.

8. Therefore, based on the decision of the Hon'ble Supreme Court and this Court, no case is made to grant any relief to the Petitioners.

9. Incidentally, the Petitioners had instituted Writ Petition No. 2884 of 2017 in this Court to challenge the Order-In-Original without resorting to the appellate remedy. The said Petition was disposed of by order dated 6 June 2019. In paragraph 8 of our order, we clarified that the Petitioners would have to satisfy other requirements for filing an appeal, including the statutory requirement of pre-deposit in terms of Section 129E of the Customs Act. The Petitioners never challenged our order dated 6 June 2019 but chose to institute an appeal without the pre-deposit. After such appeal was not entertained, this Petition was filed, and the relief contrary to the statutory provisions was sought from this Court. Such relief cannot be granted in exercising our discretionary jurisdiction under Article 226 of the Constitution of India.

10. The decisions of the Delhi High Court, which were relied upon by Ms. Soni, have not considered the decision of the Hon'ble Supreme Court in the case of *Kotak Mahindra* (supra). That apart, in *Mohammed Akmam* (supra), the Delhi High Court was dealing with a case of poor daily wage earners. The Petitioners, who are dealing with gold and diamond jewellery, cannot compare themselves with poor daily earners.

11. Even if in the *Pioneer Corporation* (supra), the Delhi High Court rejected the Petitioner's contentions that upon the Petitioner ceasing its business operations, it ceased to exist as a legal entity for the purpose of its liability under the Central Excise Law. The Court held only in rare and deserving cases where a clear justification is made out for such interference can a waiver be granted. Apart from the fact that Pioneer Corporation does not consider the Hon'ble Supreme Court's decision in Kotak

> **Mahindra, we are satisfied that this is not some rare and deserving case where waiver could be granted, assuming we could, in the exercise of our extraordinary jurisdiction grant such waiver.**"
>
> (Emphasis supplied)

The High Court of Bombay follows the judgment of the Apex Court in the case of **KOTAK MAHINDRA BANK** and holds that the High Court should not direct Appellate Authorities to admit and hear appeals unaccompanied by a minimum pre-deposit requirement. The Bombay High Court holds that total waiver was impermissible under Section 129-E of the Act.

10.5. The High Court of Gujarat, in **ALTAFHUSEN MAYUDDIN KHATRI V. UNION OF INDIA**[7] considers the pre-condition deposit under Section 35-F of the Central Excise Act, which is *pari materia* to Section 129-E of the Customs Act, which requires pre-deposit to entertain an appeal, wherein it is held as follows:

> "17. Therefore, the question that would arise before us is whether a prima facie case, as canvassed by learned advocate for the petitioner, can be considered at this stage to grant

[7] **Special Civil Application No.17850 of 2021 disposed on 28.10.2024**

waiver of the amount of pre-deposit, which is a pre-condition for preferring an appeal before the CESTAT. The petitioner has relied upon the decision of the Hon'ble Jharkhand High Court in *Sri. Satya Nand Jha's* case (supra), which has upheld the vires of Section 35F of the Central Excise Act, 1944 by referring to the concession made by the respondent authority that, in extreme cases, the assessee is not remedy-less and that it can prefer a writ petition. The Hon'ble Delhi High Court, while considering the aspect of wrong valuation has directed waiver of the amount of penalty in the case of *Mohammed Akmam Uddin Ahmed* (supra) to grant an opportunity to the assessee to prefer an appeal. Whereas, the Hon'ble Allahabad High Court, in the case of *Shukla & Brothers* (supra) has observed that the phrase "undue hardship" would also cover a case where the appellant has a strong prima facie case.

18. **Considering the aforesaid dictum of law, it appears that the petitioner, therefore, must satisfy this Court that he has a good prima facie case to the effect that he is likely to succeed in the appeal. In order to come to the conclusion that the petitioner would succeed in the appeal, having a good prima facie case, so as to grant waiver of the pre-condition of pre-deposit for filing the appeal, the petitioner is required to disclose a situation where he may be either subjected to gross injustice and / or misfortune or he is liable to excessive demand, contrary to the facts and evidence on record or the impugned orders are perverse, coupled with the fact that the conduct of the petitioner is blotless.**

19. **Considering the facts of the case and the three tests which may be considered to arrive at a prima facie conclusion as to whether the petitioner has a prima facie case for waiver of the pre-deposit or not, we are required to examine the facts, which are recorded in the order-in-original.**

20. A glaring aspect of the case is that the petitioner was manufacturing "Gutkha" in a clandestine manner, without having any Registration. None of the FFS machines were registered under Rules 7 and 8 of the Rules, 2008. Moreover, the case involves disputed questions of facts relating to the period of operation, the number of machines and the retail price

> of the product vis-a-vis the applicability of Rules 12 and 17(2) of the Rules, 2008. Therefore, we refrain from analysing the submissions made by learned advocate for the petitioner on merits and it would be open to the petitioner to raise all contentions, which are raised in this petition, before the CESTAT."
>
> (Emphasis supplied)

The High Court of Gujarat holds that there must be a strong *prima facie* case to waive the pre-deposit requirement before the CESTAT. In terms of the elucidation of law by the Gujarat High Court, interference to waive pre-deposit before the CESTAT is warranted when gross injustice is caused to the appellant or he is held excessively liable, contrary to the facts and evidence on record, or when the impugned Order-in-Original is perverse, and when the conduct of the petitioner is exemplary.

10.6. The High Court of Delhi, in its later judgment, in the case of **TECMAX ELECTRONICS V. THE PRINCIPAL COMMISSIONER OF CUSTOMS**[8] has held as follows:

> "11. The Court has heard the parties and perused the various decisions relied upon by the parties. This issue of whether this Court has the discretion to waive of the mandatory pre-deposit under Section 129E of the Customs Act, 1962 is no

[8] CUSAA 121/2025 & CM APPL.53805/2025 disposed on 28.08.2025

longer *res integra* in view of the consistent decisions passed by the Supreme Court and this Court.

12. In various judgments it has now been held that after the amendment of Section 129E of the Customs Act, 1962 (hereinafter "*the Act*") in 2014, the pre-deposit in terms of the said provision would have to be paid mandatorily. The said section as amended reads as under:

> "*129-E. 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 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 129-A, 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 129-A, 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).*"

13. **In *Diamond Entertainment Technologies (supra)* the Court was considering whether in cases where the show cause notice and the period of dispute was prior to the date of amendment to Section 35F of the Central Excise Act, 1944, the requirement of mandatory pre-deposit would be applicable. The Court while relying on the decision of this Court in *Anjani Technoplast Ltd. v. Commissioner of Customs*, *(2015) 326 ELT 472 (Del.)* has held that in view of the words "*shall not*" used in amended Section 35F of the Central Excise Act, 1944, there is an absolute bar on CESTAT from entertaining the appeals without the pre-deposit.** The relevant portion of the said decision reads as under:

> "*12. In view of the above decisions, it can no longer lie in the mouth of any assessee, filing an appeal, before the CESTAT, after 6th August, 2014, to contend that, merely because the period of dispute, in its case, or the date when show cause notice was issued to it, was prior, in point of time to the amendment of Section 35F of the Central Excise Act/Section 129E of the Customs Act, it would not be required to make mandatory pre-deposit, or that it was entitled to seek waiver thereof, either in whole or in part.*
>
> *13.* ***Thought it may be argued that, this writ Court, in exercise of the inherent powers conferred on it by Article 226 of the Constitution of India in appropriate cases, may allow the appellant to prosecute its appeal before the CESTAT, without requiring to pay the mandatory pre-deposit.***
>
> *14. In Pioneer Corporation v. Union of India, (2016) 340 ELT 63, Shubh Impex v. Union of India, (2018) 361 ELT 199 (Del) and Manoj Kumar Jha v. DRI, (2019) 365 ELT 166 (Del), this Court, even while dealing with cases in which the appeal had been filed before the CESTAT after 6th August, 2014, nevertheless, allowed the appeal to be prosecuted on payment of partial pre-deposit, given the financial stringency in which the respective appellants, before it, were placed; a reading of these decisions would reveal, that the attention of this Court had not been invited to its earlier judgment in Anjani Technoplast (supra) which set out, in clear and unambiguous terms, that every appeal, before the CESTAT, filed after the amendment of Section 35F/129E would be maintainable only if mandatory pre-deposit were made.*

15. The Civil Appeal, preferred against the said decision, also stood dismissed by the Supreme Court, as reported in Anjani Technoplast Ltd. v. CCE, (2017) 348 ELT A132 (SC).

[...]

17. In view of the aforesaid merger, of the judgment of the Division Bench of this Court in Anjani Technoplast (supra) with the order passed by the Supreme Court in appeal thereagainst, we are bound, by Article 141 of the Constitution of India, to follow the law laid down in Anjani Technoplast (supra), in preference to that laid down in Pioneer Corporation (supra), Manoj Kumar Jha (supra) and Shubh Impex (supra).

18. In the opinion of this Court, once the judgment in Anjani Technoplast (supra) stood merged with the dismissal of the Civil Appeal, preferred thereagainst, by the Supreme Court, there could be no question of this Court, in a subsequent case, adopting a view that an appeal, preferred before the CESTAT after 6th August, 2014, could be maintained without pre-deposit of the entire amount of duty confirmed against the concerned appellant by the authority below.

*20. A **reading of Section 35F of the Central Excise Act reveals, by the usage of the peremptory words "shall not" therein, that there is an absolute bar on the CESTAT entertaining any appeal, under Section 35 of the said Act, unless the appellant has deposited 7.5 % of the duty confirmed against it by the authority below.***

21. The two provisos in Section 35F relax the rigour of this command only in two respects, the first being that the amount to be deposited would not exceed Rs. 10 crores, and the second being that the requirement of pre-deposit would not apply to stay applications or appeals pending before any authority before the commencement of the Finance (No. 2) Act, 2014, i.e. before 6th August, 2014.

*22. **Allowing the CESTAT to entertain an appeal, preferred by an assessee after 6th August, 2014, would, therefore, amount to allowing the CESTAT to act in violation, not only of the main body of Section***

> ***35F but also of the second proviso thereto, and would reduce the command of the legislature to a dead letter.***
>
> *23. Inasmuch as the judgment in Pioneer Corporation (supra), Shubh Impex (supra) and Manoj Kumar Jha (supra) are contrary to the law laid down in Anjani Technoplast (supra) as well as to the law laid down in Vice-Chancellor, University of Allahabad v. Dr. Anand Prakash Mishra (supra), A.B. Bhaskara Rao v. C.B.I. (supra), Manish Goel v. Rohini Goel (supra) and State of Bihar v. Arvind Kumar (supra), none of which have been noticed in the said decisions, it is not possible for us to follow the decisions in Pioneer Corporation (supra), Shubh Impex (supra) and Manoj Kumar Jha(supra), on which learned counsel places reliance."*

14. Thus, in view of the above legal position, the pre-deposit under Section 129E of the Act would also be mandatory and the CESTAT cannot entertain the appeal without the pre-deposit.

15. **It would be relevant to note that the Co-ordinate Bench of this Court in the above decision has held that in exercise of the jurisdiction under Article 226 of the Constitution of India, in appropriate cases the mandatory pre-deposit may be condoned. This position has also been noted by this Court in *Mohd. Akmam Uddin Ahmed (supra)* wherein the Court was considering a matter where the valuation of the seized goods itself was held to be unjustified and no proper calculation was provided in support of the same. Further, after considering the various judgements on the issue under considerations including *Diamond Entertainment Technologies (supra)* and *Anjani Technoplast Ltd. (supra)*, it was held that the Court has the power to exercise discretion to waive of the mandatory pre-deposit in "*rare and deserving cases*".** The relevant position of the said decision reads as under:

> "***37. The decision of the Coordinate Bench of this Court in Diamond Entertainment case [Diamond Entertainment Technologies (P) Ltd. v. Commr., CGST, 2019 SCC OnLine Del 12414 : (2019) 368 ELT 579] ,***

<u>while refusing to permit the petitioner to prosecute its appeal before CESTAT without complying with the conditions of the mandatory pre-deposit did not, in fact, rule out that in exercise of its inherent powers under Article 226 of the Constitution of India. It was held that the appellant may be allowed to prosecute its appeal without the payment of the pre-deposit amount. Reliance is placed on para 11 of this judgment which reads as follows:</u>

"11. Thought it may be argued that, this writ court, in exercise of the inherent powers conferred on it by Article 226 of the Constitution of India in appropriate cases, may allow the appellant to prosecute its appeal before the CESTAT, without requiring to pay the mandatory pre-deposit...."

[...]

39. The judgments in Dish TV India Ltd. case [Dish TV India Ltd. v. Union of India, 2020 SCC OnLine Del 2580] , Diamond Entertainment case [Diamond Entertainment Technologies (P) Ltd. v. Commr., CGST, 2019 SCC OnLine Del 12414 : (2019) 368 ELT 579] , Anjani Technoplast case [Anjani Technoplast Ltd. v. Commr. of Customs, 2015 SCC OnLine Del 13070 : (2015) 326 ELT 472] and Nimbus Communications Ltd. case [Nimbus Communications Ltd. v. Commr. of Service Tax, 2016 SCC OnLine Bom 6792] are distinguishable on facts as these judgments were primarily adjudicating the following two questions of law:

(i) the issue of challenge to the constitutional validity of Section 129-E of the Act and Section 35-F of the CE Act; and

(ii) whether the law as applicable pre-amendment (on or before 6-8-2014) in (i) above, would be applicable in the circumstances where the infringing act or the lis occurred prior to the amendment.

[...]

41. Thus, an analysis of the conspectus of law as enunciated above gives a clear understanding that after passing of the Amendment Act on 6-8-2014, the amended Section 129-E of the Act and also Section 35-F of the CE Act

shall be applicable in those cases where the appeal has been filed after 6-8-2014.

42. However, as discussed above, the Coordinate Benches of this Court have exercised and, thus, preserved the power as available under Article 226 of Constitution of India to either waive the pre-deposit condition or to grant the right to appeal subject to a part deposit or security. The power, albeit, has been exercised only in rare and exceptional cases.

43. It was held by the Allahabad High Court, speaking through Dr D.Y. Chandrachud, Chief Justice (as His Lordship then was) in Ganesh Yadav case [Ganesh Yadav v. Union of India, 2015 SCC OnLine All 9174] that:

"8. ... Whether the writ jurisdiction under Article 226 should be exercised, having due regard to the discipline which has been laid down under Section 35-F of the Act, is a separate matter altogether but it is important to note that the power under Section 226 (sic: Article 226) has not been, as it cannot be, abridged."

(emphasis supplied)"

[...]

66. ***The valuation of the goods seized, is also not in terms of the prices as set forth in the Government of Assam's agarwood policy. No proper calculation has been made for the penalty levied. The penalty imposed on the petitioners has been imposed based on a provisional valuation. The penalty imposed is therefore without any legal basis and cannot be sustained.***

67. The principle enunciated in the judgments in Pioneer Corpn. case [Pioneer Corpn. v. Union of India, 2016 SCC OnLine Del 6758 : (2016) 340 ELT 63] , Narender Yadav case [Narender Yadav v. Commr. of Customs, 2019 SCC OnLine Del 12415] , Shubh Impex case [Shubh Impex v. Union of India, 2018 SCC OnLine Del 8793] , Manoj Jha case [Manoj Kumar Jha v. DRI, (2019) 365 ELT 166] and Ganesh Yadav case [Ganesh Yadavv. Union of India, 2015 SCC OnLine All 9174] ***is that the court has the power to exercise discretion to waive requirement of pre-deposit of penalty in "rare and deserving cases" where a clear justification is made out for interference.*** *In Narender Yadav case [Narender Yadav v.*

Commr. of Customs, 2019 SCC OnLine Del 12415] , this Court had found that the order-in-original did not give any reasons for the penalty imposed on the petitioners and hence, was unwarranted. In Shubh Impex case [Shubh Impex v. Union of India, 2018 SCC OnLine Del 8793] , the court found that the condition of pre-deposit would completely disable and paralyse the business of the appellant and given the financial condition and background of the appellant would suffer financial breakdown and irreparable harm. In Manoj Jha case [Manoj Kumar Jha v. DRI, (2019) 365 ELT 166] it is held that since the petitioner has very limited means to deposit any amounts, the relief to him is warranted.

68. Admittedly, the petitioners are poor daily wage earners who are unable to make a challenge to the seizure and confiscation on account of the penalty imposed on them. The aforegoing discussion on the prices and valuation of agarwood chips and agarwood oil suggest, albeit, prima facie, that no proper valuation of the goods seized was carried out by the respondents."

16. **In view of the above, the law on this issue is now clear, that CESTAT does not have the power to admit appeal without the pre-deposit, however, this Court in exercise of writ jurisdiction may waive the same in rare circumstances, on a case to case basis.**

17. This Court is not inclined to grant waiver from pre-deposit in exercise of writ jurisdiction since the present case, in the opinion of the Court, is not a rare case necessitating interference.

18. However, since there is a financial distress which is pleaded, the Appellant is permitted to pay the pre-deposit of Rs. 23,88,667/- within a period of six months with the CESTAT. If the said amount is deposited within six months, the appeal shall be restored to its original position."

(Emphasis supplied)

11. The learned senior counsel, as observed hereinabove, submits that pre-deposit must be waived, if the appellant would be able to demonstrate financial hardship when he approaches the Constitutional Court.

12. The Bombay High Court in **LALIT KULTHIA** *supra*, no doubt distinguished **MOHAMMED AKMAM UDDIN AHMED** *supra***,** where waiver of pre-deposit was made owing to the facts obtaining before it. The appellants in **MOHAMMED AKMAM UDDIN AHMED** were daily wage employees, and hence the High Court of Bombay in **LALIT KULTHIA** rejected the claim of the petitioner since he was in the business of gold and diamond. In the same way, the position of the petitioner is required to be considered.

13. **The petitioner, by no stretch of imagination, can be portrayed to be a fly-by-night operator. He is an established businessman, an importer of repute, whose commercial presence in the field did not emerge overnight.** The Company having been incorporated as far back as 1997, has consistently engaged in import operations of substantial magnitude, running into

several hundreds of crores on each occasion. **To liken such a petitioner to a daily wage employee, in whose favour the Court may have exercised discretion to waive the pre-deposit, would be wholly incongruous and misplaced. Extending such discretion to a financially robust operator, would be holding out a premium to the petitioner.** The plea that the petitioner is in financial distress, and that the pre-deposit therefore deserves to be waived, is a contention that cannot be countenanced.

14. The learned senior counsel has sought to paint the controversy within the Constitutional canopy, invoking Articles 19(1)(g) and 21 of the Constitution of India, contending that the insistence on pre-deposit imposes an unreasonable and oppressive financial burden. **This submission overlooks the settled principle that the legislative mandate cannot be diluted to suit the convenience or inconvenience of a few. The concept of financial burden is inherently related. What may appear onerous to one may be trifling to another.** In the case at hand, the petitioner, a commercial enterprise of considerable means,

cannot be heard to lament the requirement of a pre-deposit, especially in the face of a penalty of close to Rs.417 crores. **The pre-deposit does not operate as a stonewall denying access to justice, rather it represents a statutory discipline that applies to all the appellants. The statutes mandate endures, subsists and is unyielding, until the constitutional Courts deem fit to restrain its march.**

15. The learned senior counsel further contends that crude palmolein is but, a byproduct of crude palm oil, two being essentially the same and therefore, the benefit of exemption notification applicable to crude palm oil, ought to extend to crude palmolein as well. **Such an assertion treads into the realm of scientific and technical enquiry, an area best left to the domain of experts and statutory authorities competent to adjudicate such questions. This Court, under Article 226 of the Constitution of India, would be *loathe* to don the mantle of scientific expertise or engage in chemical taxonomy.** Accordingly, this Court declines to entertain such technical contentions and leaves them for the appropriate authorities to

consider, in accordance with law, as it is trite that this Court would not sit in the armchair of experts and decide the issue of the kind that is brought before the Court.

Finding no merit in the petition, the inescapable conclusion is its dismissal. It is accordingly, ***dismissed.***

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ