2026:AHC:95732-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 2238 of 2026

M/s Runway Impex and another

…..Petitioner(s)

Versus

Union of India and 2 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Akanksha Mishra
Counsel for Respondent(s)	:	A.S.G.I., Dhananjay Awasthi, Krishna Agarawal

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Along with :

1. Writ Tax No. 2265 of 2026:

M/s Indian Impex Overseas Traders and another

Versus

Union of India and 2 others

2. Writ Tax No. 2291 of 2026:

M/S Dream World Inc And Another

Versus

Union of India and 2 others

3. Writ Tax No. 2292 of 2026:

G.S. Traders And Another

Versus

Union of India and 2 others

Court No. - 3

HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE SWARUPAMA CHATURVEDI, J.

1. Heard Ms. Akanksha Mishra, learned counsel for the petitioners, Sri Dhananjay Awasthi, learned counsel for the revenue, Sri Krishna Agarawal, learned counsel for the respondent No.1 and perused the record.

2. This batch of writ petitions raises a common legal issue. Visited with a common Adjudication Order (Order-in-Original), passed under the provisions of the Customs Act, 1962 (hereinafter referred to as 'the Act'), the petitioners intend to file individual appeals, thereagainst. They also seek opportunity to apply for waiver of the condition to pre-deposit 7.5% of the disputed demand of Custom duty/penalty, in terms of Section 129E of the Act. They have been prevented from filing such appeals, ostensibly on the objection raised that they have not pre-deposited or appended proof of deposit of 7.5% of the disputed demand of customs duty/penalty, imposed under the Order-in-Original (proposed to be assailed by them), before the appellate forum.

3. For ready reference, the facts giving rise to the issue in Writ-Tax No. 2238 of 2026 (M/S Runway Impex and another vs. Union of India and others), may be noted, in brief.

4. The petitioner is engaged in the business of import and export of betel nuts. It had entered into an agreement with one M/s Margo Impex Private Limited-for storage and warehousing of those goods, in a Free Trade Warehousing Zone. On 29.10.2024, a Show Cause Notice (in short 'SCN') was issued to the petitioner, proposing to confiscate the goods imported by it. The petitioner participated in the proceedings and submitted its reply. However, by order dated 28.11.2025, the objections raised have been rejected, and a disputed demand of penalty of Rs.3,91,82,273/- has been imposed under Sections 112(a) and 114(AA) of the Act.

5. To 'entertain' an appeal against that order, the petitioner is required to pre-deposit 7.5% of that penalty demand. It would amount to Rs.29,38,670.47/-.

6. In the above facts, the petitioner has disclosed that it has been prematurely prevented from filing its appeal, for reason of that pre-deposit not made and/or for lack of proof of such pre-deposit-submitted with its memorandum of appeal. Voicing this grievance, the writ petition has been filed, seeking the following relief:

> *"i) issue a writ, order or direction in the nature of Mandamus directing the respondent no.2 to waive of the mandatory pre-deposit amount deposited for filing of the appeal;*
>
> *ii) issue a writ, order or direction in the nature of Mandamus directing the respondent no.2 to decide the petitioners' Waiver Application filed alongwith his appeal (Irfan vs. Joint Commissioner, Customs Commissionerate, Noida) before the respondent no.2 against the Order-in-Original No. 51/JC/NOIDA-CUS/2026-26 dated 28.11.2025, in view of the judgment passed by this Hon'ble Court in Writ Tax no. 5866 of 2025."*

7. First, no waiver may be granted by this Court, at this stage, unless there exists a proceeding in the nature of an appeal, registered with the appeal authority, with respect to which waiver may be prayed for. Yet, it has been asserted by learned counsel for the revenue, unless the petitioner makes pre-deposit @ 7.5% of the disputed demand of penalty etc. involved, its appeal may never be entertained i.e. registered, in view of the clear language of Section 129E of the Act.

8. In such circumstances, we had granted opportunity to learned counsel for the revenue to complete his instructions. That has been done. To the extent, the issue is purely legal and in view of the order we propose to pass, we also find the issue is not *res-integra*.

Accordingly, the petition is being disposed of, at this stage.

9. Section 129E of the Act reads as below:

> *"[**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 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).]"*
>
> (emphasis supplied)

10. Thus, no appeal may be 'entertained' unless the condition of pre-deposit at the rate of 7.5% of the disputed demand of custom duty or penalty, as the case may be, is first satisfied.

11. At the same time, it is recognized-the statutory authorities do not have any power to grant waiver of that requirement. Yet, in exceptional facts, this Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, may pass appropriate orders with respect to waiver. That principle arises on the strength of the reasoning in the decision of the coordinate bench in **M/s Ganesh Yadav Vs. Union of India**

& Ors.; 2015 (6) ADJ 250, wherein, following **Shyam Kishore Vs. Municipal Corporation of Delhi (1993) 1 SCC 22**, in paragraph nos. 3 and 8 of that judgment of the coordinate bench, it has been noticed as below :

> *"3. The petitioner has sought in these proceedings a writ restraining the respondents from enforcing the mandatory requirement of a pre-deposit of 7.5% of the duty demanded in pursuance of the order of adjudication dated 31 March 2015. The second relief if for a declaration that Section 35F of the Act, as amended with effect from 6 August 2000, so as to provide a mandatory pre-deposit of 7.5% for first appeals and 10% to second appeals of the total tax or penalty demanded, is ultravires or unconstitutional.*
> ...
> ...
> ...
>
> ...
> *8. ... 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 Section 26 has not been, as it cannot be, abridged."*
>
> *(emphasis supplied)*

12. Therefore, it cannot be successfully claimed by the revenue that there does not exist any power to grant the relief prayed. Howsoever restricted it may be, such power, referable to the extraordinary jurisdiction of this Court under Article 226 of the Constitution, does exist. Whether this power is to be exercised, in the present fact, may remain to be considered at the appropriate stage, in the individual/peculiar facts of each case.

13. However, before such consideration may ever arise, there must exist a proceeding with respect to which that power may be exercised, by this Court. At present, owing

to the refusal on part of the Commissioner (Appeals) and for reason of insistence by the revenue authorities that pre-deposit at the rate 7.5% of the disputed demand be first made and/or its proof be shown to exist, at the time of filing of the appeal, no proceeding has been registered. Consequently the stage to consider the grant of waiver has not arrived.

14. In **Dhoom Chand Jain vs. Chaman Lal Gupta and another AIR 1962 All 543**, a coordinate bench of the then Chief Justice M.C. Desai and Justice S.N. Dwivedi held- the word 'entertained' appearing in the proviso to Rule 90 of the Order XXI, C.P.C., bears the meaning 'admitted for consideration'.

15. As to the objection raised by the revenue that unless deposit is first made, no appeal may be 'entertained', and therefore, the insistence on part of the revenue and the Commissioner (Appeals), that such pre-deposit must be made before the appeal may be entertained i.e. registered, requires serious consideration. Yet, that issue is squarely decided against the revenue almost from the beginning. Thus, another coordinate bench of B. Mukrji and D.P. Uniyal, JJ., in **Kundan Lal Vs. Jagan Nath Sharma and others, AIR1962 All 547** had the occasion to interpret the proviso to Rule 90 of the Order XXI, C.P.C. It was opined as below:

> *"This in our opinion clearly goes to indicate that the stage at which the question as to whether the applicant has complied with the terms of the proviso to Rule 90 of Order XXI arises is when the court is actually seized of the application filed by the judgment-debtor for setting aside the sale"*
>
> *(emphasis supplied)*

16. In **Haji Rahim Bux and others Vs. Haji Sanaullah and sons, Pechbagh, Kanpur 1962 SCC OnLine All 156**, another coordinate bench had the occasion to consider that issue. Therein, in his judgment, Justice S.D. Singh framed the following issue:

> *10. Taking the two appeals together, the questions, which arise for decision and which were canvassed before us, are:*
>
> *(1) ...*
>
> *(2) ...*
>
> *(3) Whether it was necessary for the applicants to comply with the provisions of Cl. (b) of the first proviso to rule 90 of Or. XXI of the Code within the period of limitation prescribed for an objection under the aforesaid rule.*
>
> *(emphasis supplied)*

17. That issue was answered as below:

> *"35. This brings us to the next point involved in the case, namely, the one relating to the interpretation of the proviso to R. 90 of Or. XXI of the Code, which has already been extracted in the earlier part of this judgment. An application to set aside a sale is not to be entertained unless*
> *(1) the objector puts forward a round, which could not have been taken by him on or before the date on which the sale proclamation was drawn up, and*
>
> *(2) he deposits such amount not exceeding twelve and a half per cent of the sum realised by the sale or furnishes such security as the Court may demand but the Court may, for reasons to be recorded, dispense with his requirement.*
>
> *36. It is not in dispute that no deposit was made by the objectors, or any security furnished by them, in application was moved for exemption being granted for the operation of Cl. (b) of the proviso to R. 90 afore-said on 13th February, 1960, and was allowed on 29th February, 1960. The ale, it may be recalled, took place on 6th October, 1959, and the objection under R. 90 was filed on 24th November, 1959. The question is whether the objector should have made the deposit or furnished security under Cl. (b) of he proviso or applied for exemption thereunder within the period of limitation prescribed for filing an objection under R. 90, and if, in the absence of compliance with the provisions of Cl. (b) within the aforesaid period of limitation the objection could be 'entertained' or if it was liable to be thrown out. Reliance was placed by the learned Counsel for the respondents on Bawan Ram v. Kunj Behari Lal, 1960 A.L.J. 578, in which V. Bhargava, J. has held that under such circumstances the proviso bars the entertainment of an objection*

altogether and that consequently if the requirements of the proviso are not complied with within the time within which the objection could be filed, it cannot thereafter be entertained, nor can the deposit or security therefor accepted after the expiry of such time. It was, therefore, urged that the objection filed by the appellants was liable to be dismissed on that ground. A Full Bench decision of the Patna High Court—Brij Behari Lal v. Srinivas Ram Kumar, A.I.R. 1939 Pat. 248 was cited in Bawan Ram's 1960 A.L.J. 578 case and was distinguished on the ground that the corresponding proviso added by the Patna High Court to R. 90 aforesaid laid a bar to the 'admission' of a petition and it was pointed out that under that rule if there was compliance with the proviso before admission, it had to be held that there was sufficient compliance. The words used in the Patna Rule are:

"(i) Provided that no application to set aside a sale shall be admitted unless

(a) …… ……

(b) the applicant deposits with his application such amount not exceeding 12½ per cent of the sum realized by the sale or such other security as the Court may in its discretion fix, unless the Court, for reasons to be recorded, dispenses with the deposit."

37. This proviso differs from the one added by this Court in two important respects:

(1) The words "shall be admitted" have been used for the words "shall be entertained."

(2) The words "deposits with his application" have been used in Cl. (b) as against the simple word "deposits" used in the Allahabad amendment.

38. The use of the words "deposits with his application" seem to make it obligatory that the deposit must be made or other requirements of the clause satisfied simultaneously with the moving of the application, but the word "admitted" in the opening clause indicates that even if the provisions of Cl. (b) of the proviso are complied with by the time the application is admitted, the objector will be deemed to have complied with the provisions of the clause. It is this latter aspect of the Patna amendment which was referred to by V. Bhargava, J. and the Patna view distinguished.

39. Since then, however, there has been another decision of this Court in Kundan Lal v. Jagan Nath Sharma, 1962 A.W.R. 500 : 1962 A.L.J. 574, in which Bawan Ram v. Kunj Behari Lal, 1960 A.L.J. 578, has been overruled, and it has been held that the expression "entertain" does not mean the same thing as the filing of the application or the admission of the application by the Court and that the true intention of the proviso is to allow the judgment debtor to prosecute his application for the setting aside of the sale, if he complies with the conditions contained in the

proviso to R. 90 before the application is finally heard and disposed of by the Court.

40. The meaning of the word "entertain" was also understood in the same sense in another recent decision, Dhoom Chand v. Chaman Lal, 1962 A.L.J. 729, to which one of us was a party, and it was pointed out:

"The dictionary meaning of the word 'entertain' is: to deal with; to admit to consideration. In its application to Cl. (a) the word bears the meaning of admitting to consideration. That clause enjoins the Court from considering the application on any ground which could have been taken on or before the drawing up of the sale proclamation. In its application to Cl. (b) the word should bear the same sense. Accordingly while the court cannot refuse to take an application which is not backed by deposit or security, it cannot judicially consider it. It is expected that the Court would ordinarily give an opportunity to the applicant to comply with Cl. (b), and would reject the application if Cl. (b) were still not complied with."

41. The word "entertain" was also explained by their Lordships of the Supreme Court in Samrath Transport Co. v. Regional Transport Authority, A.I.R. 1961 S.C. 93, though in another connection. Interpreting Sec. 68-F of the Motor Vehicles Act, 1939, their Lordships ob served at page 97:

"The word 'entertain' may mean to receive on file or keep on file and in that sense the Authority may refused to keep an application on its file by rejecting it either at the time it is file or thereafter. It does not connote any time but only describes the scope of the duty under that clause. It ca only mean that the Authority cannot dispose of the application on merits but can reject it as not maintainable."

42. According to this view the word 'entertain' may mean that an objection may not be received by the Court without the provisions of the Proviso being complied with at the time of the filing of the objection, or that the objection may not be heard on merits unless compliance with it is duly made. It is in this latter sense that the word 'entertain' was under stood in Dhoom Chand v. Chaman Lal, 1962 A.L.J. 729, as well as in Kundan Lal v. Jagan Nath Sharma, 1962 A.W.R. 500: 1962 A.L.J. 574 `and the reason for the same is obvious."

18. The then Chief Justice M.C. Desai in his concurring opinion further observed as below:

"I agree that the word "entertain" in the proviso, means not "receive" or "accept" but "proceed to consider on merits" or "adjudicate upon." An application under the rule is not to be entertained unless the applicant deposits such amount or furnishes such security as the Court may in its discretion fix, unless it dispenses with the deposit or security."

(emphasis supplied)

19. That consistent view of this Court was noticed and affirmed by the Supreme Court in **Lakshmiratan Engineering Works Ltd. Vs. Assistant Commissioner (Judicial) I, Sales Tax, Kanpur Range, Kanpur and another 1967 SCC OnLine SC 140**. Therein, it was observed as below:

> *"To begin with it must be noticed that the proviso merely requires that the appeal shall not be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the appellant to be due. A question thus arises what is the meaning of the word "entertained" in this context? Does it mean that no appeal shall be received or filed or does it mean that no appeal shall be admitted or heard and disposed of unless satisfactory proof is available? The dictionary meaning of the word "entertain" was brought to our notice by the parties, and both sides agreed that it means either "to deal with or admit to consideration". We are also of the same opinion. The question, therefore, is at what stage can the appeal be said to be entertained for the purpose of the application of the proviso? Is it "entertained" when it is filed or is it "entertain" when it is admitted and the date is fixed for hearing or is it finally "entertained" when it is heard and disposed of? Numerous cases exist in the law reports in which the word "entertained" or similar cognate expressions have been interpreted by the courts. Some of them from the Allahabad High Court itself have been brought to our notice and we shall deal with them in due course. For the present we must say that if the Legislature intended that the word "file" or "receive" was to be used, there was no difficulty in using those words. In some of the statutes which were brought to our notice such expressions have in fact been used. For example, under Order 41, rule 1, of the Code of Civil Procedure it is stated that a memorandum shall not be filed or presented unless it is accompanied etc.; in section 17 of the Small Causes Courts Act, the expression is "at the time of presenting the application". In section 6 of the*
>
> *Court-fees Act, the words are "file" or "shall be received". It would appear from this that the Legislature was not at a loss for words if it had wanted to express itself in such forceful manner as is now suggested by counsel for the State. It has used the word "entertain" and it must be accepted that it has used it advisedly. This word has come in for examination in some of the cases of the Allahabad High Court and we shall now refer to them.*
>
> *In Kundan Lal v. Jagannath Sharma(1), the Court was concerned with Order 21, rule 90, of the Code of Civil Procedure which had been amended by the Court by changing the provisions of the original Code. The changed rule is as follows:*
>
> *"Provided that no application to set aside the sale shall be entertained:*
>
> *(a) upon any ground which should have been taken by the applicant on or before the date on which the sale proclamation was drawn up;*
>
> *(b) unless the applicant deposits such amount not exceeding 12 1/2 per cent. of the sum realised by the sale or furnishes such security as the court may in its discretion fix, except when for reasons to be recorded it dispenses with the requirements of this clause.*
>
> *.....*
>
> *The word "entertain" is explained by a Divisional Bench of the Allahabad High Court as denoting the point of time at which an application to set aside the sale is heard by the court. The expression "entertain", it is stated, does not mean the same thing as the filing of the application or admission of*

the application by the court. A similar view was again taken in Dhoom Chand Jain v. Chamanlal Gupta and Another(2), in which the learned Chief Justice Desai and Mr. Justice Dwivedi gave the same meaning to the expression "entertain". It is observed by Dwivedi, J., that the word "entertain" in its application bears the meaning "admitting to consideration" and therefore when the court cannot refuse to take an application which is backed by deposit or security, it cannot refuse judicially to consider it. In a single Bench decision of the same court reported in Bawan Ram and Another v. Kunj Beharilal and Another(3), one of us (Bhargava, J.) had to consider the same rule. There the deposit had not been made within the period of limitation and the question had arisen whether the court could entertain the application or not. It was decided that the application could not be entertained because proviso (b) debarred the court from entertaining an objection unless the requirement of depositing the amount or furnishing security was complied with within the time prescribed. In that case the word "entertain" is not interpreted but it is held that the court cannot proceed to consider the application in the absence of deposit made within the time allowed by law. This case turned on the fact that the deposit was made out of time. In yet another case of the Allahabad High Court reported in Haji Rahim Bux & Sons and Others v. Firm Samiullah & Sons(4), a Division Bench consisting of Chief Justice Desai and (1) A I.R. 1962 All. 547.(3) A.I.R. 1962 All. 42. (2) A.I.R. 1962 All. 543. (4) A.I.R. 1963 All. 320.

Mr. Justice S.D. Singh interpreted the words of Order 21, rule 00, by saying that the word "entertain" meant not "receive" or "accept" but "proceed to consider on merits" or "adjudicate upon".

In our opinion these cases have taken a correct view of the word "entertain" which according to dictionary also means "admit to consideration".

...

Now the complicating factor is the existence of the rule, and here, the divergence of submission arises on whether the rules can be regarded as mandatory or merely directory. It is quite obvious that the section as it stands only requires that at the time of the consideration of the appeal, there should be satisfactory proof, that the admitted tax has been deposited. It only says that no appeal shall be entertained unless accompanied by satisfactory proof of the payment of the tax. This satisfactory proof may take any form; in fact in the present case satisfactory proof was tendered in the shape of a certificate from the Sales Tax Officer that the admitted tax had been deposited and well within time. Under section 9 and its proviso as they stand, it is quite obvious that "entertainment" means the point of time when the appeal is being considered. There was thus satisfactory proof in the present case.

...

The distinction made by the learned Chief Justice between the tangible and intangible objects does not, in our opinion, fall for consideration in the present case. If one holds that by "entertainment" is meant the time of admission of the appeal, satisfactory proof may be furnished at the time of admission of the appeal. We are of opinion that by the word "entertain" here is meant the first occasion on which the court takes up the matter for consideration. It may be at the admission stage or if by the rules of that Tribunal the appeals are automatically admitted, it will be the time of hearing of the appeal. But on the first occasion when the court takes up the matter for consideration, satisfactory proof must be presented that the tax was paid within the period of limitation available for the appeal. In the present case when the Assistant Commissioner took up the appeal for consideration, satisfactory proof was available in the shape of a certificate which even today is not denied. In our opinion the Assistant Commissioner

was wrong in declining to consider the appeal in the presence of such uncontestable proof."

(emphasis supplied)

20. The view taken by this Court has been consistent. It affirms that 'entertainment' of an appeal, cannot be equated with its mere filing or registration. At that stage, the act performed may be ministerial but not quasi-judicial. A proceeding, howsoever defective, may be registered by a quasi-judicial authority. Subject to removal/curing of those defects, it may be registered as a regular proceeding.

21. At that stage, either the defects may stand cured, or the objection to the defect may be considered by the quasi-judicial authority. It may either be sustained, or time may be granted to cure the defect, (or the proceeding may fail for the reason that it is a hopelessly defective proceeding), or such other order may be passed, as may be deemed fit in the peculiar facts of a case. That would fall within the domain of exercise of quasi-judicial power/function. At that stage, the quasi-judicial authority may first exercise and apply its judicial mind-whether such proceeding (brought before it), is worthy of being 'entertained' as an appeal. Till that stage (of application of mind by the quasi-judicial authority), has been crossed, it cannot be said if the appeal has been ‘entertained’ by that quasi-judicial authority.

22. In view of that consistent view of the Court, the decision of the Gujarat High Court in **Ramesh Vasantbhai Bhojani vs. Union of India and 2 others, 2017:GUJHC:11689-DB** that is seen to adopt a slightly different reasoning may not require our further

consideration. We find, the reasoning offered by this Court, as has been confirmed by the Supreme Court and consistently applied over six decades, applies with equal force, even in the context of Section 129E of the Act.

23. Accordingly, the writ petitions stand **disposed of** with the direction that the proceeding being presented by the petitioner before the Commissioner (Appeals), against the Order-in-Original dated 28.11.2025, must be allowed to be filed, numbered and thus registered, without insisting on pre-deposit at the rate of 7.5% of the disputed demand of customs duty/penalty, at that stage. Such proceeding may be registered as a defective proceeding-for reason of pre-deposit not made or proof of pre-deposit not produced, at that stage. The issue, whether that appeal is to be 'entertained', may be considered by the Commissioner (Appeals), on the quasi-judicial side, where that proceeding is listed/placed before it, first.

24. Since time has been lost to the petitioner for no fault on its part, subject to the petitioner filing such proceeding within a period of four weeks from today, the same may be accepted and may be registered (even if defective), without raising any objection as to limitation, at that stage.

25. Let a copy of this order be communicated to Chief Commissioner of the CGST & Central Excise, Lucknow Zone and Chief Commissioner of the CGST & Customs Meerut Zone by Sri Dhananjay Awasthi, for effective compliance in other similar cases/situations.

(Swarupama Chaturvedi,J.) (Saumitra Dayal Singh,J.)

April 28, 2026
Anurag/-