CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH - COURT No. I

Customs Miscellaneous Application No. 40032 of 2026
(on behalf of Respondent)
in
Customs Appeal No.40796 of 2024

(Arising out of Order-in-Appeal No.15/2024-TRY (CUS) APP dated 24.06.2024 passed by Commissioner of GST & Central Excise (Appeals) Coimbatore Circuit Office @ Trichy No.1, Williams Road, Cantonment, Tiruchirappalli 620 001)

Commissioner of Customs **...Appellant**
No.1, Williams Road
Cantonment, Trichy 620 001

Versus

Shri R. Kumaresan @ Mukesh **...Respondent**
Flat No.3, 1st Floor
No.4, Pranav Apartments
1st Trust Line Street
Chennai 600 028
Tamil Nadu

APPEARANCE:

Present for the Appellant : Shri Sanjay Kakkar, Authorised Representative
Present For the Respondent : Mr. Raghavan Ramabhadran, Advocate
Mr. Rohan Muralidharan, Advocate
Ms. Shobana Krishnan, Advocate
Mr. Brijesh Dash, Advocate

CORAM :

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)

FINAL ORDER No.40489/2026

DATE OF HEARING: 07.04.2026
DATE OF DECISION: 16.04.2026

Per Ajayan T.V.,

This appeal C/40796/2024 filed by the Revenue, has come up for hearing on 07.04.2026, consequent to the out of turn hearing granted vide the miscellaneous order Nos.41014-41015/2015 dated 14.11.2025 of this Tribunal, passed while

addressing two miscellaneous applications filed by the Respondent, one seeking an out of turn early hearing of the Appeal, and the other, pointing out noncompliance with an earlier miscellaneous order dated 06.08.2025 of this Tribunal and seeking appropriate directions.

2. Relevant facts, shorn of unnecessary details, are that the Directorate of Revenue Intelligence, on 08.10.2018, conducted a search of the Respondent's residence and a farm stated to belong to his spouse, which culminated in seizure of alleged exotic birds and animals on the stated reasonable belief that they were smuggled. Cash and bank balances alleged to be sales proceeds of smuggling and two vehicles stated to have been used for the alleged business of purchase and sale of the smuggled exotic birds/animals, were also seized. The seized birds and animals were handed over to Dr. P.A. Kalaignan, Arignar Anna Zoological Park, Vandalur, Chennai for safe custody and transportation to the said zoological park, for further upkeep and maintenance of the said seized birds and animals. After due process of law, the Ld. Adjudicating Authority vide an Order in Original dated 10.12.2019, ordered absolute confiscation of the seized birds and animals, confiscation of the cash and bank balances and confiscation of the seized vehicles without an option to pay redemption fine and release the said vehicles. The Adjudicating Authority, inter-alia, imposed a penalty of Rs. Twenty Lakhs under Section 112(a) of the Customs Act, 1962 and also a penalty of Rs. Ten Lakhs under Section 114AA on the Respondent. On an appeal preferred by the Respondent, the Ld. Commissioner (Appeals), held that the Revenue has failed to establish smuggling or illegal import and vide an Order in Appeal dated 24-06-2024 (OIA), set aside the confiscations and penalties and allowed the appeal of the Respondent with consequential benefits. Aggrieved by the said OIA, the Department has preferred this appeal.

3. At the outset, the Respondent submitted that the appeal is liable to be dismissed *in-limine* as the same has been filed by the Revenue despite the bar prescribed in the National Litigation Policy and

contrary to the Board's instructions in this regard. Both parties were *ad idem* that they would make submissions on this aspect at first, as the issue goes to the root of the matter and only if the Appeal were liable to be entertained, the question of addressing the matter on merits would arise.

4. We have accordingly heard the Ld. Advocate, Shri. Raghavan Ramabhadran appearing on behalf of the Respondent and the Ld. Authorised Representative, Shri. Sanjay Kakkar appearing for the Appellant Revenue. While the Ld. A.R., on conclusion of his arguments at the bar, filed his written submissions, Ld. Advocate for the Respondent who had undertaken to file his written submissions, filed the same on the next day.

5. The Ld. A.R. has encapsulated his arguments in the written submissions as under:

a) During the hearing on 10.03.2026 the Respondent had taken the plea based on their unnumbered reply/objections filed on 15.12.2025 that the Department's appeal was liable to be dismissed in limine due to lack of monetary jurisdiction.

b) The Respondent had not filed any cross objections against the Appellant's Appeal which would give rise to a presumption that the Respondent has nothing to state to contest the impugned Appeal. As per Rule 15A of the CESTAT Procedure Rules, the time period for filing cross objections is one month which has elapsed long back.

c) That there exists a statutory requirement under Section 129D(4) of the Customs Act for filing a memorandum of cross objections, which entails, not only a time limitation, but also a manner as specified in the rules. That any objection to any of the grounds raised in the appeal by the appellant could be agitated only through such a memorandum which needs to be registered and numbered as per Rule 15 of the CESTAT Procedure Rules

d) The miscellaneous application No.C/Misc/40032/2026 filed by the Respondent and listed for hearing alongwith the main appeal does not raise any ground of lack of monetary jurisdiction and

only prays for compensation for the loss of exotic birds and damages for the notational losses suffered.

e) In the absence of any formal plea/objection for agitating the issue of lack of jurisdiction by citing the CBIC Circular on monetary grounds for appeal, such a plea is dehors the record and liable to be dismissed at the threshold.

f) Notwithstanding the above, the impugned case does not fall in the exclusion clauses for monetary limits, as prescribed by CBIC in Instruction f.No.390/Misc./30/2023-JC dated 02.11.2023. The said instruction lists only specific cases which involve liability/leviability of tax/duty, Redemption Fine and penalty. There is no case directing exemption from filing appeal envisaged in the said instruction where goods have been confiscated absolutely.

g) That when goods are absolutely confiscated and no duty has been quantified in the order, the monetary limit for filing a departmental appeal in CESTAT is reckoned based on the Market Value of the goods (often referred to as the seizure value) and/or the Penalty imposed, whichever is relevant to the dispute. That in cases of absolute confiscation, the "fine" is effectively the entire value of the goods (as they are not redeemable) and the market value represents the total revenue impact of the dispute which cumulatively exceed the threshold limit for filing the appeal.

h) That during the hearing on 10.03.2026, reliance was placed on the decisions in ***CC v Harish Chander, 2023 (5) TMI 1456-SC, CC, Cochin v. P.V. Rasheed, 2024 (11) TMI 1513-Kerala High Court*** and ***CC v Disha Tulsiani, Ashok kumar Tahlani and Ors, 2024 (3) TMI 1058- Allahabad High Court***, to make a point that in cases involving absolute confiscation of goods, Hon'ble Supreme Court and Hon'ble High Courts of Kerala and Allahabad have held that value of the goods shall be the determining factor to examine the question of maintainability of appeal considering the monetary limit involved in the appeal.

i) Reliance is placed on the Judgement of Hon'ble Meghalaya High Court in the case of ***CC v Daleep Kumar Verma & Ors, 2024 (12) TMI 300- Meghalaya High Court*** in support of the contention that seizure value is the yardstick in absolute confiscation matters for maintainability of the appeal.

Ld.A.R. prays that the plea of the Respondent for dismissing the Appeal relying on CBIC Instructions prescribing monetary limits, be dismissed.

6. Ld. Counsel for the Respondent, in his written submissions contended that the Board in exercise of its power under Section 131 BA had issued instruction F.No. 390/Misc/163/2010-JC dated 17.08.2011, fixed the monetary limits below which Appeal shall not be filed by the Department in the CESTAT, High Court and Supreme Court. These instructions were amended from time to time and the most recent Instruction in F.No. 390/Misc/30/2023-JC dated 02.11.2023, provided that when the determinative element, i.e. the duty or tax under dispute in cases where duty is imposed, or penalty is within the prescribed monetary limits, the Department shall not precipitate the matter by filing an appeal. The limit pertaining to CESTAT was Rs.50 lakhs.

7. Drawing attention to the parent circular dated 17.08.2011, it was contended that where the imposition of penalty is the subject matter of dispute and the said penalty exceeds the limit prescribed, then the matter could be litigated further. It was argued that in the present case the total quantum of penalty imposed is Rs.30 lakhs which is less than the monetary limit for filing of the Appeal before CESTAT. Such being the case, the appeal is summarily liable to be set aside for want of monetary jurisdiction.

8. Ld. Counsel emphasized that as per the above circular, in cases involving only penalty, the quantum of penalty alone shall be the determinative factor for computing the monetary threshold. It was argued that while carving exceptions, the Circular does not carve

out any specific exception in respect to the confiscation proceedings.

9. It was further contended that the question of whether or not the appeal is within the monetary limits prescribed, being a question of maintainability, the same can be raised at any stage prior to passing of orders. It was pointed out that in the present case, the Respondent has raised such a question at the first available instance, in its Misc. Application No.40906/2025 dated 16.09.2025. It is therefore prayed that the present Appeal be dismissed.

10. Ld. Counsel distinguished the case laws relied upon by the Appellant contending as under:

a) The decision in ***Commissioner of Customs, Amritsar v. Harish Chander, 2023 (5) TMI 1456-SC*** was a decision passed on the basis of the fact that the value of the seized goods itself was below the prescribed monetary limit and the Hon'ble Supreme Court dismissed the appeal on the ground of low tax effect. Whereas in the present case there is non duty or tax in dispute at all and the sole determinative element is penalty which amounts to Rs.30 lakhs well below the prescribed monetary limit of Rs.50 lakhs. Hence this decision is inapplicable.

b) The decision in ***The Commissioner of Customs (Preventive), Cochin v. P.Rasheed, 2024 (11) TMI 1513- Kerala High Court***, placed reliance on the decision in Harish Chander supra and it is evident that the Court has moved under the assumption that once the value of the goods itself is below the monetary limit, the possible tax cannot exceed the said value, thereby rendering the possible tax demand also below the monetary limit.

c) The decision in the ***Commissioner of Customs v. Disha Tulsiani, Ashok Kumar Tahalani, Disha Tulsiani, Nirmal Tulsiani, 2024 (3) TMI 1058-Allahabad High Court***, pertained to a scenario where the disputed amount for each of the parties therein were lesser than the monetary limit and hence the appeal filed by the Department was dismissed in

terms of the National Litigation Policy. Similar to the above decisions, the value of the goods in respect of each of the parties therein itself was below the monetary limit and hence, the possible tax cannot exceed the said value. Furthermore, the judgement pertained to absolute confiscation of gold, a notified good covered under Section 123 of the Customs Act, where the burden of proof lies on the person from whom the goods are seized. However, the present case pertains to confiscation of birds, animals, vehicles, cash and bank accounts which are not notified under Section 123 of the Customs Act, and hence the said case being distinguishable on facts is not applicable and does not aid the case of the Department.

d) The decision in the ***Commissioner of Customs (Preventive) v. Daleep Kumar Verma & Ors, 2024 (12) TMI 300- Meghalaya High Court,*** is distinguishable as from para 6 of the decision its clear that it pertained to absolute confiscation of gold, a notified good covered under Section 123 of the Customs Act, where the burden of proof lies on the person from whom the goods are seized. However, the present case pertains to confiscation of birds, animals, vehicles, cash and bank accounts which are not notified under Section 123 of the Customs Act, and hence the said case being distinguishable on facts is not applicable and does not aid the case of the Department. Furthermore, the said decision has been distinguished by the Hon'ble Manipur High Court in the case of ***The Commissioner of Customs (Preventive) Shillong v. Shri. R.K. Swami Singh And (vice versa) And The Commissioner of Customs (Preventive), Shillong v. Shri. R.K. Swami Singh, (2025) (9) TMI 1550- MANIPUR HIGH COURT***.

e) In the decision in ***Commissioner of Customs, Preventive, Kolkata v. Shri. Anil Kumar Soni and Shri. Anil Kumar Gaur, 2026 (4) TMI 85- Calcutta High Court***, it was a case of town seizure of goods which are specifically covered under section 123 of the Customs Act and therefore the issue of confiscation pertaining to such a seizure involved a substantial and recurring question of law, whereas the present case does

not involve interpretation of any statutory provision, recurring legal issue and any question of law as it pertains to specific facts where the Department has failed to establish the seized birds and animals have been actually smuggled and further the penalty involved is only Rs. Thirty Lakhs well below the prescribed monetary limit. Therefore the factual circumstances render the said judgement distinguishable from the present case and it would not therefore be applicable.

11. Ld. Counsel in the written submission has drawn attention to para 24 of the decision of the Hon'ble Manipur High Court to show the manner in which the decision of the Meghalaya High Court was disagreed with, holding that on a perusal of the Instruction dated 02.11.2023, 'smuggled goods' is not included in any of the three conditions laid down in para 2 of the said instruction and that therefore the Court was of the opinion that the category of 'smuggled goods' cannot be read into para 2 of the Instruction dated 02.11.2023. It was therefore contended that the decision of the Hon'ble Meghalaya High Court cannot be considered as having persuasive value.

12. Ld. Counsel has also submitted that the Honourable supreme court in ***Commissioner of Customs (Export), New Delhi ICD TKD v. Balaji Overseas, 2024 (389) ELT 289 (SC)***, which pertained to an appeal filed by the Department against the decision of the Tribunal in ***Him Logistics Pvt Ltd v. Commissioner of Customs, New Delhi ICD TKD,2020 (372) ELT 109 (Tri-Del)***, has dismissed the appeal filed by the Department under the National Litigation Policy. It was submitted that the decision of the Tribunal was with respect to export goods that had a value of Rs.2,29,03,044/- and the duty determined was Rs.1,28,73,481/- as is evident from para 11 of the said decision, which incidentally was concerned with absolute confiscation of the alleged prohibited goods. However, while dismissing the appeal, the Hon'ble Supreme Court has considered only the duty component of Rs.1,28,73,481/- and not the value of the goods. It is contended that this clearly establishes that for the purposes of determining maintainability

under National Litigation Policy, the value of the goods is irrelevant, and it is only the duty or penalty component that is determinative. Therefore, in light of the decision of the Hon'ble Apex Court in Balaji Overseas, it is submitted that the Appeal merits to be dismissed as below the monetary limit in terms of the National Litigation Policy.

13. We have heard the rival submissions and carefully perused the case laws submitted as well as the material available on record.

14. The sole issue at the threshold that arises for our consideration is that of the maintainability of the appeal preferred by the Revenue, given the monetary limits prescribed as per the prevailing instructions for preferring an appeal before this Tribunal.

15. The Ld. A.R. has in the written submissions, at the outset, raised a contention that the Respondent had taken a plea, based on their unnumbered reply/objections filed on 15.12.2025, that the Department's appeal was liable to be dismissed *in limine* due to lack of monetary jurisdiction. It is also the contention of the Ld. A.R. that in the absence of any formal plea/objection for agitating the issue of lack of jurisdiction by citing the CBIC Circular on monetary grounds for appeal, such a plea is dehors the record and liable to be dismissed at the threshold.

16. The above submissions are stated only to be rejected. While no doubt, the Respondent has indeed raised a plea that the Department's appeal was liable to be dismissed *in limine* due to lack of monetary jurisdiction, in their reply filed on 15.12.2025, however, the materials on record reflects that the Respondent had earlier raised the said contention; as one of the many contentions advanced, in both their miscellaneous applications dated 16.09.2025, filed. Therefore, the contention that there has been an absence of any formal plea/objection agitating the issue of lack of jurisdiction by citing the CBIC Circular on monetary grounds for appeal, and that therefore such a plea is dehors the record and liable to be dismissed at the threshold, is incorrect. These miscellaneous applications, after having been heard on 04.11.2025,

had resulted in the out of turn hearing of the Appeal granted vide the miscellaneous order Nos.41014-41015/2015 dated 14.11.2025 of this Tribunal. It is only pursuant to such grant of out of turn hearing that the Appeal came to be listed for hearing on 07.04.2026. The submission that, such a plea on lack of jurisdiction to prefer an appeal citing the CBIC circular on monetary grounds for appeal is dehors the record, is therefore, to our mind, disingenuous. Suffice to say, we are chary of such submissions.

17. Even otherwise, it is no more *res-integra* that this Tribunal has jurisdiction to examine such questions of law neither raised before the lower authorities nor in the appeal memorandum, but are now sought to be raised. Rule 10 of the CESTAT (Procedure) Rules, 1982 allows the parties to urge grounds not taken in the appeal, provided the Tribunal grants leave to the parties to do so. In fact, the Tribunal has also been given a wide power to decide the appeal on grounds not taken in the memorandum of appeal, with this power being circumscribed only by the requirement that the party affected must be given an opportunity of being heard in respect of the new grounds sought to be urged. Therefore, there is no impediment for this Tribunal, to permit even verbal submissions on a question of law not agitated earlier, so long as a fair and reasonable opportunity is granted to the other side to address the said contention. The decisions in ***National Thermal Power Co. Ltd v. CIT, 1998 (99) ELT 200 (SC)*** and ***Devengare Cotton Mills Ltd v. CCE, Belgaum, 2006 (198) ELT 482 (SC)*** lay down the aforesaid propositions. Therefore, the contentions of the Revenue on these counts as noted above, are rejected.

18. Further, the contention that there exists a statutory requirement under Section 129D(4) of the Customs Act for filing a memorandum of cross objections, which entails a time limitation and that any objection to any of the grounds raised in the appeal by the appellant could be agitated only through such a memorandum, is fallacious for reasons stated hereinafter. Section 129D(4) merely states that provisions of sub-section (4) of Section 129A is attracted as specified therein. It is Section 129A (4) that stipulates

a time limit for the party against whom the appeal has been preferred, notwithstanding that the said party may not have appealed against such order or any part thereof, to file a memorandum of cross objections against any part of the order appealed against, if he chooses so to do. That is to say, once an order has been passed substantially in favour of an assessee, and the assessee, even if aggrieved by any part of the order has chosen not to appeal against that part; then, as per Section 129A (4), as soon as the assessee gets a notice that an appeal has been preferred by the Revenue who is aggrieved by that order, the assessee as the Respondent, gets an opportunity to file his cross objections within the time frame specified in Section 129A (4) against that part of the order which he was otherwise aggrieved with, but had not preferred an appeal against until then. In other words, the time limit to file a memorandum of cross objections that is specified in Section 129A (4), only applies in case the Respondent is aggrieved by any part of the order that has been appealed against by the Revenue, and wishes to do so. However, that does not prevent the Respondent from contesting the grounds raised by the Revenue in its appeal. For the aforesaid reasons, the contention that any objections to the grounds raised in appeal could be agitated only through a memorandum of cross objections is liable to be rejected as misconceived.

19. We turn to address the contention advanced by the Ld. A.R. that the Respondent having not filed any cross objections against the Appellant's Appeal, it would give rise to a presumption that the Respondent has nothing to state to contest the impugned Appeal, more so when the time limit of one month per Rule 15A of the CESTAT Procedure Rules had elapsed long back. By the reference to the one month stipulated in Rule 15A of the CESTAT Procedure Rules, it would appear that what is being referred to is the time limit to file a reply to the appeal stated therein. However, if the presumption that the Ld. A.R. canvasses were to be applied; namely, that if the Respondent does not file any cross objections, (in the context of this rule, reply), against the Appellant's Appeal,

within the one month stipulated, it would give rise to a presumption that that the Respondent has nothing to state to contest the impugned Appeal; then, as a sequitur, every such assessee thereafter has to merely await the outcome of the hearing on the grounds of appeal filed by the Revenue, without demur! The presumption being so canvassed, is not premised on any statutory provisions. It also goes against the grain of our adversarial system of judicial and quasi-judicial proceedings that is rooted on principles of natural justice functioning as the constitutional bedrock for ensuring fairness in such proceedings. As already observed supra, even if a reply has not been filed within the time frame prescribed, that does not prevent the Respondent from contesting the grounds raised by the Revenue in its appeal. Such a presumption canvassed, is therefore liable to be rejected. However, the material on record reflect that the reply to the Appeal was filed by the Respondent in Court on 16.12.2025, and the request of the Ld. A.R. for time of one month to file his counter on the reply was also acceded to, and the matter then adjourned to 20.01.2026. Therefore, given that it is a settled position in law that procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice, ***(Sambhaji & Ors v. Gangabai & Ors, 2009-TIOL-79-SC-MISC refers),*** *ex-facie*, there appears to be no impediment to consider the reply filed by the Respondent along with the contentions raised by the Appellant, at the appropriate juncture, if at all it becomes necessary. In any event, as noticed above, since the Respondent had already canvassed the plea regarding the appeal being not maintainable on grounds of monetary limits in the miscellaneous applications filed earlier; the objections regarding the reply to the Appeal filed by the Respondent in Court on 16.12.2025, need not detain us while deciding the threshold issue at hand, namely, the issue of maintainability of the Appeal on monetary limits prescribed under the Government's Litigation Policy; as the said objections would be germane only when the Appeal itself is being decided on its merits.

20. To proceed further, and to appreciate the rival contentions on the applicability of monetary limit for the appeals preferred by

Revenue, it would be apposite to notice the relevant instructions issued by the Central Board of Excise and Customs (hereinafter referred to as the 'Board' in short), under the Ministry of Finance (Department of Revenue), Government of India, pertaining to methods adopted for reducing Government Litigation in line with the National Litigation Policy.

21. It is seen that the Board, vide its **Instruction F. No. 390/Misc./163/2010-JC, dated 20-10-2010, on the subject of "*Reduction of Government litigations - providing monetary limits for filing appeals by the Department before CESTAT and High Courts – Regarding*",** has conveyed to its field formations the intent and purpose of the National Litigation Policy, as under:

> "**The National Litigation Policy formulated by the Government of India aims to reduce Government litigation so that the Government ceases to be a compulsive litigant. The purpose underlying this Policy is to ensure that valuable time of the Courts is spent in resolving pending cases and in bringing down the average pendency time in the Courts. To achieve this, the Government should become an "efficient" and "responsible" litigant.**
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> 2. **Accordingly the Policy lays down, inter alia, that in Revenue matters appeal shall not be filed if the amount involved is not very high and is less than the monetary limit fixed by the Revenue authorities**. It also states that appeals shall not be filed if the matter is covered by a series of judgments of the Tribunal and the High Courts which have held the field and have not been challenged in the Supreme Court. The Policy also lays down that no appeal shall be filed where the assessee has acted in accordance with the long standing practice and also merely because of change of opinion on the part of the jurisdictional officers.
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> 3. The Hon'ble Bombay High Court in its order dated 21-6-2010 in the case of CCE v. Techno Economic Services Pvt. Ltd. [2010 (255) E.L.T. 526 (Bombay)] had desired that CBEC consider issuing circular, on the lines of circulars issued by the CBDT, so as to reduce litigations arising out of indirect tax litigations.
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> 4. In respect of appeals filed in the Supreme Court, the proposals are examined by the Board before filing. The Civil Appeals on matters

relating to valuation and classification are filed under Section 35L(b) of the Central Excise Act, 1944 and Section 130E(b) of the Customs Act, 1962. Such appeals are being filed after careful scrutiny by the Board and while examining, the amount involved is kept in mind. On all issues other than those relating to valuation and classification, SLPs are filed by the Board after obtaining the opinion of the Ld. Law officer from the Ministry of Law. However, it may be mentioned that Board had issued Instruction vide DO F. No. 390/170/92-JC dated 13-1-93 as modified by D.O. of even number dated 27-10- 1993 advising the field formations that appeals should not be filed in the Supreme Court in cases where the duty involved is Rs. 5 Lakhs or less. The said instruction was issued in the light of observation of the Supreme Court as conveyed by the then Ld. Attorney General and was reiterated vide various Circulars issued by the Board from time to time. It is, therefore, desired that the above instruction must be kept in mind while sending proposals to the Board for filing civil appeal or SLP in the Supreme Court.

5. **The Board has decided that appeals in the Tribunal shall not be filed where the duty involved or the total revenue including fine and penalty is Rs. 1 Lakh and below. Similarly in the case of High Courts appeals should not be filed in cases where the duty involved or total revenue including fine or penalty is Rs. 2 lakhs and below**. **While deciding the thresholds mentioned above, the duty involved shall be the decisive element. For example, in a case involving duty of Rs. 1 lakh with mandatory penalty of Rs. 1 lakh besides any other penalty imposed under the relevant provisions of Law, no appeal shall henceforth be filed in the Tribunal as the duty involved is within the monetary limit of Rs. 1 lakh. Similarly, if the duty involved in a case is Rs. 2 lakhs with equal mandatory penalty and any other penalty imposed under the Law in force at the relevant time, no appeal shall be filed before the High Court.**

6. Adverse judgments relating to the following should be contested irrespective of the amount involved :

(a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.

(b) Where notification/instruction/order or Circular has been held illegal or ultra vires.

(c) Where audit objection on the issue involved in a case has been accepted by the Department." **(emphasis supplied)**

22. Thereafter, the Board, issued **Instruction F.No. 390/Misc./163/2010-JC, dated 17-8-2011**, on the subject of "***Reduction of Government litigation - providing monetary limits for filing appeals by the Department before CESTAT/High Courts and Supreme Court – Regarding***", providing, inter-alia, as under:

"**In exercise of the powers conferred by** Section 35R of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994 and **Section 131BA of the Customs Act, 1962** the Central Board of Excise & Customs (hereinafter referred to as the Board) fixes **the following monetary limits below which appeal shall not be filed in the Tribunal**, High Court and the Supreme Court :

Sl. No	Appellate Forum	Monetary limit
1.	CESTAT	Rs. 5,00,000/-
2.	HIGH COURTS	Rs. 10,00,000/-
3.	SUPREME COURT	Rs. 25,00,000/-

2. **For ascertaining whether a matter would be covered within or without the aforementioned limits, the determinative element would be duty/tax under dispute**. **To illustrate it further in a case involving duty of Rs. 5 lakhs or below with equal penalty and interest, as the case may be, no appeal shall be filed in the Tribunal. Similarly, no appeal shall be filed in the High Courts if the duty involved does not exceed Rs. 10 lakhs with or without penalty and interest**. Further, the Commissionerates shall not send proposal to the Board for filing Civil Appeal or Special Leave Petition in the Supreme Court in a case involving duty up to Rs. 25 lakhs, whether with penalty and interest or otherwise. **However, where the imposition of penalty is the subject matter of dispute and the said penalty exceeds the limit prescribed, then the matter could be litigated further**. Similarly, where the subject matter of dispute is the demand of interest and the amount of interest exceeds the prescribed limit, then the matter may require further litigation.

3. **Adverse judgments relating to the following should be contested irrespective of the amount involved :**

(a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.

(b) Where Notification/Instruction/Order or Circular has been held illegal or ultra vires.

4. xxxxx

5.The revised monetary limits shall come into force from 1-9-2011.

6.**This Instruction is in continuation of earlier Instruction of even number dated 20-10-2010 and seeks to revise the monetary limits**, exclusion clauses and clarifies the doubts raised by the field formations on this issue. **(emphasis supplied)**

23. In 2023, the Central Board of Indirect Taxes & Customs, revised the aforesaid instructions and issued **C.B.I. & C. (Judicial Cell) Instruction F. No. 390/Misc./30/2023-JC, dated 2-11-2023** on the subject of ***"Reduction of Government litigation - providing monetary limits for filing appeals by the Department before CESTAT, High Courts and Supreme Court – Regarding,*** which is reproduced below:

"**In exercise of the powers conferred by Section 131BA of the Customs Act, 1962 and in partial modification of earlier instruction issued from F. No. 390/Misc./163/2010-JC, dated 17-8-2011**, the Central Board of Indirect Taxes & Customs (hereinafter referred to as the Board) fixes **the following monetary limits below which appeal shall not be filed in the CESTAT,** High Court and the Supreme Court :

Sl. No	Appellate Forum	Monetary limit
1.	SUPREME COURT	Rs. 2 Crore
2.	HIGH COURTS	Rs. 1 Crore
3.	CESTAT	Rs. 50 Lakh

2. **Adverse judgments relating to the following should be contested irrespective of the amount involved** :

(a) **Where the constitutional validity of the provisions of an Act or Rule is under challenge;**

(b) Where Notification/Instruction/Order or Circular has been held illegal or *ultra vires*;

(c) Classification and refund issues which are of legal and/or recurring nature.

3. Withdrawal process in respect of pending cases in above forums, as per the above revised limits, will follow the current practice that is

being followed for the withdrawal of cases from the Supreme Court, High Courts, and CESTAT." **(emphasis supplied)**

24. Thus we find that these instructions have been issued by the Board in consonance with the stated purpose of the National Litigation Policy, which is to ensure that valuable time of the Courts is spent in resolving pending cases and in bringing down the average pendency time in the Courts. Undeniably, when Government is the largest Litigant, it was incumbent upon the Government to shed the tag of 'Compulsive Litigant' and become an "efficient" and "responsible" litigant. Therefore, to achieve the stated aim of reducing Government Litigation, the Policy lays down, inter-alia, that in Revenue matters appeal shall not be filed if the amount involved is less than the monetary limit fixed by the Revenue Authorities.

25. We also notice from the instructions issued by the Board as reproduced above that, in so far as matters of Indirect Taxes and Customs are concerned; right from the initial instruction of 2010, through the instruction of 2011, and including the instruction of 2023, over the past thirteen years; for ascertaining whether a matter would be covered within the monetary limits prescribed in each of these instructions, below which threshold an appeal shall not be filed before the Tribunal, or the High Court or Supreme Court as the case may be, the decisive and determinative element has consistently been the duty/tax under dispute. We say so for the reason that while the instruction of 2023 has partially modified the earlier instruction of 2011, the modification is only in respect of the monetary limit prescribed, without any modification of para 2 of the instruction dated 17-08-2011, which categorically asserted that for ascertaining whether a matter would be covered within the monetary limits prescribed, below which threshold an appeal shall not be filed before the Tribunal, or the High Court or Supreme Court as the case may be, the decisive and determinative element would be the duty/tax under dispute.

26. In fact, the instruction dated 17-08-2011, by way of an illustration made it amply clear how the decisive nature of the duty/tax under dispute being the determinative element was to be reckoned. It was stated by way of an illustration that in a case involving duty of Rs. 5 lakhs or below with equal penalty and interest, as the case may be, no appeal shall be filed in the Tribunal**.** In other words, when the case involved duty, with equal penalty and interest, still, it was the amount of duty alone that was the determinative element to decide whether an appeal ought to be filed. The instruction dated 17-08-2011 also made it clear that where the imposition of penalty is the subject matter of dispute and the said penalty exceeds the limit prescribed, then the matter could be litigated further. That is to say, where a dispute of duty/tax was absent and where the imposition of penalty is the subject matter of dispute, then if the said penalty did not exceed the limit prescribed, the Revenue cannot prefer an appeal before the Tribunal, High Court or Supreme Court as the case may be.

27. We also notice that while the instructions does prescribe the monetary limit, equally, the instructions also provided for cases where adverse judgements were directed to be contested irrespective of the amount involved. Such exceptions, consistently contained the following two categories right from the initial instruction of 2010, through the instruction of 2011, and including the instruction of 2023, over the past thirteen years, namely, (a) Where the constitutional validity of the provisions of an Act or Rule is under challenge and (b) Where Notification/Instruction/Order or Circular has been held illegal or *ultra vires***.** It is seen that the instruction of 2023 also has a third category, namely, Classification and refund issues which are of legal and/or recurring nature.

28. Bearing the aforesaid in mind, we now address the contention of the Appellant that the impugned case does not fall in the exclusion clauses for monetary limits, as prescribed by CBIC in Instruction f.No.390/Misc./30/2023-JC dated 02.11.2023. It is contended that the said instruction lists only specific cases which involve liability/leviability of tax/duty, Redemption Fine and penalty, that

there is no case directing exemption from filing appeal envisaged in the said instruction where goods have been confiscated absolutely. It was also contended that when goods are absolutely confiscated and no duty has been quantified in the order, the monetary limit for filing a departmental appeal in CESTAT is reckoned based on the Market Value of the goods (often referred to as the seizure value) and/or the Penalty imposed, whichever is relevant to the dispute and further that in cases of absolute confiscation, the "fine" is effectively the entire value of the goods (as they are not redeemable) and the market value represents the total revenue impact of the dispute which cumulatively exceed the threshold limit for filing the appeal.

29. We find that the Instructions issued by the Board over the years are consistently categorical on the stipulation that the determinative element is the tax/duty under dispute in terms of the monetary limits specified, below which Revenue is forbidden from filing an appeal before the CESTAT, High Court or Supreme Court, as per the specified thresholds. We have seen that the said instructions are pursuant to the National Litigation Policy and in order to achieve the stated purpose of reducing Government Litigation. Such being the case, the Board has also categorically provided the exceptions where the matter has to be contested irrespective of the amount involved. Hence, to accept the aforesaid contentions advanced would be to read in exceptions in the instructions, contrary to that which has been cautiously spelt out by the Board for adherence by all field formations below. It can hardly be the Revenue's case that the Board is ignorant of occurrences of cases involving absolute confiscation without any option given for redeeming the goods imposed by paying a redemption fine. Therefore, when such instructions do not state any exceptions in respect of cases involving absolute confiscation without an option to redeem the goods, it can only lead to the conclusion that the Board, despite being aware of such situations, has consciously chosen, not to create such an exception or distinction that warrants the adverse judgements in such cases of absolute confiscation without an option

to redeem goods, also to be appealed against irrespective of the amount involved. Hence the proposition put forth by the Ld.A.R. that the monetary limit for filing a departmental appeal in CESTAT is reckoned based on the Market Value of the goods (often referred to as the seizure value) and further that in cases of absolute confiscation, the "fine" is effectively the entire value of the goods which ought to be considered as the basis for determining the monetary limits for preferring appeals, do not have any basis in any of the instructions hitherto issued and prevailing as on date. Given that no such exception or basis for such propositions are seen in the instructions issued by the Board, we are of the firm opinion that it can only be viewed as a conscious and well thought out decision of the Board not to create any such exceptions in so far as cases of absolute confiscation without an option to redeem goods are concerned, in the interests of reducing Government Litigation, and in consonance with the National Litigation Policy.

30. In our considered view, the present case pertains the challenge of the Revenue in this Appeal to the finding of the Appellate Authority that the Department has failed to establish the seized birds and animals have been actually smuggled and has set aside the confiscation as well as the penalty of Rs. Thirty Lakhs imposed on the Appellant. Thus the case turns on its own peculiar facts and circumstances and does not involve any issue where, (a) the constitutional validity of the provisions of an Act or Rule is under challenge, or (b) where a Notification/Instruction/Order or Circular has been held illegal or *ultra vires,* or (c) Classification and refund issues which are of legal and/or recurring nature; the three exceptions that have been stated in the instructions, and which alone are situations where Revenue is required to contest the adverse judgement irrespective of the amounts involved. On the contrary, the said Appeal pertains to a dispute of the Appellate Authority setting aside a penalty of thirty lakhs that has been imposed on the Respondent, and the said amount of penalty is well below the prescribed monetary limit of fifty lakhs, the threshold set below which the Revenue cannot prefer an appeal. Therefore, the

present case clearly being out of the ambit of the three categories of exceptions as per the prevailing instructions of the Board as noted above, we are of the considered view that the present case squarely attracts the application of the aforesaid instructions prescribing monetary limit as issued by the Board which bars the Revenue from preferring an appeal, given the quantum of penalty under dispute, and thus, the Appeal preferred by the Revenue in this case is liable to be held as not maintainable and is consequently liable to be dismissed.

31. It would be apposite at this juncture to notice that in ***Union of India v. Arviva Industries (I) Ltd, 2007 (209) ELT 5 SC,*** the Honourable Supreme Court has held as under:

"**2. We agree with the view taken by the High Court that the Circulars issued by the Central Board of Excise & Customs are binding on the department and the department cannot be permitted to urge that the Circulars issued by the Board are not binding on it**."

Likewise, in ***CCE, Bolpur v. Ratan Melting & Wire Industries, 2008 (231) ELT 22 (SC),*** a constitution Bench of the Apex Court has held that Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes. We notice that the said decision in Ratan Melting & Wire Industries supra, has been followed and the said proposition applied by the Jurisdictional High Court of Madras in the case reported in ***CC, Tuticorin v. Vedanta Ltd, 2025 (98) G.S.T.L. 91 (Mad)***.

32. In a recent pronouncement of the Honourable Supreme Court in ***Vijay Krishnaswami @ Krishnaswamy Vijaykumar v. The Deputy Director, Income Tax (Investigation), 2025 INSC 1048***, the Apex Court, after noticing its various precedents, including the Judgement in Ratan Melting & Wires Industries cited supra as well as the Judgement in ***Commissioner of Central Excise and Service Tax, Rohtak Vs. Merino Panel Product Limited, (2023) 2 SCC 597,*** went on to hold as under:

"31. **From the above precedents, this Court unambiguously held that that the circulars issued by the Revenue are binding on the**

authorities, and can tone down the rigour of the statutory provision. Therefore, it can be concluded that the circulars as discussed above are binding on the authorities who are administering the provisions of the IT Act." **(emphasis supplied)**

33. Thus, given that it is also a settled position in law that Revenue cannot argue against its own Circulars, we do not find any merits in the submissions of the Ld. A.R. as noted above, seemingly in the interstices of its silences, but effectively in its derogation and eroding the substratum of the circulars. We are also of the firm opinion that the confining of exceptions to the three categories stated in the instructions is a conscious and considered decision of the Board which reflects the clear intent of the Board that these, and these alone, would be the situations where adverse judgements can be contested. It hardly needs to be emphasized that these instructions are issued with the singular purpose of reducing Government Litigation. We are also of the considered view that such instructions issued are clearly binding on the Revenue and Revenue can't be seen advancing contentions contrary to the instructions laid down by the Board.

34. We have carefully examined the decisions cited by the appellant. In our considered opinion, these case laws differ in material aspects from the instant case in terms of the factual matrices, and statutory provisions attracted, and have thus been rightly distinguished by the Respondent as elaborated in their written submissions. While we have captured the essence of such distinctions as noted above, we have not reproduced the granular details of specific paragraphs and elaborations of distinctions that have been given in a tabular form in the written submissions of the Respondent, as they would only needlessly lengthen the present order. We therefore hold that the case laws cited by the Appellant are distinguishable from the facts and circumstances of the present case.

35. We also find it appropriate to refer to the decision of the Hon'ble Manipur High Court, in the case of ***The Commissioner of Customs (Preventive) Shillong v. Shri. R.K. Swami Singh And***

(vice versa) And The Commissioner of Customs (Preventive), Shillong v. Shri. R.K. Swami Singh, (2025) (9) TMI 1550-MANIPUR HIGH COURT . We notice that the Hon'ble High Court has reproduced the relevant instructions on monetary limits, and has held as follows:

" [22] We have minutely gone through the judgments cited by Mr. Nihar Das Gupta, learned counsel for the respondent. All these decisions consistently held that the appeals are not maintainable due to the monetary limits fixed by the Instruction dated 02.11.2023. None of the cases falls within the three exceptional categories as mentioned in Para 2.

[23] On the other hand, Mr. N. Brojendro, learned counsel for the appellant refers to the decision of Meghalaya High Court in Cus Appeal No. 1 of 2024 & order dated 22.10.2024, where it has been held that the Instruction dated 02.11.2023 prescribing monetary limits will not be applicable to the smuggled goods and appeal relating to such goods would be maintainable irrespective of the monetary limits. The plea of non-maintainability of the appeal was rejected. It is urged that in the present case at hand, the goods involved is smuggled one and hence the monetary limits will not be applicable as per the decision of Meghalaya High Court. It may be noted that SLP(C) No. 4566 of 2025 is pending before the Hon'ble Supreme Court against the decision of Meghalaya High Court.

[24] From a bare perusal of the Instruction dated 02.11.2023, it is seen that only on satisfaction of any of the three conditions, i.e., where the matter involves challenge to the constitutional validity of an Act/Rule; where the Notification/Instruction/Order/ Circular has been held illegal; or where classification and refund issues are legal/ recurring in nature, appeal will be maintainable irrespective of the monetary limits. With respect, we are not able to agree with the decision of the Meghalaya High Court that appeal will be maintainable notwithstanding the monetary limits, if the goods under investigation is smuggled one. The 'smuggled goods' is not included in any of the three conditions laid down in Para 2 of the Instruction dated 02.11.2023 and the same is incorporated

by judicial interpretation. Such a construction of statute cannot be adopted when the wordings in the relevant rules are clear. Resort to the golden rule of interpretation of statute can be resorted when the words in the rules are ambiguous and in order to achieve the object of the statute. In the case of Patheja Bros. Forgings & Stamping v. ICICI Ltd.: (2000) 6 SCC 545, a three Judge Bench of the Hon'ble Supreme Court held that "12. We have analysed the relevant words in Section 22 and found that they are clear and unambiguous and that they provide that no suit for the enforcement of a guarantee in respect of any loan or advance granted to the industrial company concerned will lie or can be proceeded with without the consent of the Board or the appellate authority. *When the words of a legislation are clear, the court must give effect to them as they stand and cannot demur on the ground that the legislature must have intended otherwise*". **In the present case, the Instruction dated 02.11.2023 does not mention the words 'smuggled goods' in Para 2 for maintainability of the appeal irrespective of the minimum monetary limits. In the circumstances, we are of the considered opinion that the category of 'smuggled goods' cannot be read into Para 2 of the Instruction dated 02.11.2023**." **(emphasis supplied)**

36. We also notice that the Honourable supreme court in ***Commissioner of Customs (Export), New Delhi ICD TKD v. Balaji Overseas, 2024 (389) ELT 289 (SC)***, which affirmed the decision of the Tribunal in ***Him Logistics Pvt Ltd v. Commissioner of Customs, New Delhi ICD TKD,2020 (372) ELT 109 (Tri-Del)***, has dismissed the appeal filed by the Department after noting the submissions at the Bar that in terms of the latest Circular dated 02-11-2023, the monetary limit has been enhanced to Rs. 2 crores. The Apex Court held that the appeal would have to be disposed of having regard to the said threshold limit as the amount in dispute in the instant cases is only Rs. 1, 28, 73, 481/-. We have also perused the decision of the Tribunal in ***Him Logistics Pvt Ltd v. Commissioner of Customs, New Delhi ICD TKD,2020 (372) ELT 109 (Tri-Del)*** which was affirmed by the Apex Court vide the aforesaid decision and we find that the said decision of the Tribunal was with respect, inter-alia, to import of goods by the appellant therein M/s. Balaji Overseas that

had a value of Rs.2,29,03,044/- and the duty determined was Rs.1,28,73,481/- as is evident from para 11 of the said decision. However, while dismissing the appeal, the Hon'ble Supreme Court has considered only the duty component of Rs.1,28,73,481/- and not the value of the goods thereby evidencing that for the purposes of determining maintainability of the Appeal preferred, the value of the goods is irrelevant, and it is only the duty or penalty component that is determinative.

37. Given our aforesaid discussions and analysis of the prevailing instructions of the Board prescribing the monetary limits for preferring appeals before the Tribunal, High Court and Supreme Court, and in light of the Apex Court decisions in ***Union of India v. Arviva Industries (I) Ltd, 2007 (209) ELT 5 SC,*** and others noticed above on the binding nature of the said instructions on the Revenue, we are of the considered view that the appeal filed in the instant case by the Revenue being below the prescribed monetary limit for preferring an appeal to CESTAT as per the prevailing instructions, cannot sustain and is liable to be dismissed as not maintainable. We also find that our aforesaid view is fortified by the Judgements of the High Court of Manipur in the case of ***The Commissioner of Customs (Preventive) Shillong v. Shri. R.K. Swami Singh And (vice versa) And The Commissioner of Customs (Preventive), Shillong v. Shri. R.K. Swami Singh, (2025) (9) TMI 1550- MANIPUR HIGH COURT*** as well as by the Order of the Apex Court in ***Commissioner of Customs (Export), New Delhi ICD TKD v. Balaji Overseas, 2024 (389) ELT 289 (SC)***, affirming the decision of the Tribunal in ***Him Logistics Pvt Ltd v. Commissioner of Customs, New Delhi ICD TKD,2020 (372) ELT 109 (Tri-Del),*** while dismissing the Civil Appeal preferred by the Revenue.

38. Hence, we hold that the appeal filed by the Revenue, being below the monetary limit prescribed for preferring an appeal to CESTAT as per the prevailing instructions, cannot be entertained and is hereby

dismissed as not maintainable. The miscellaneous application filed also stands disposed of.

(Order pronounced in open court on 16.04.2026)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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