

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/370/2026
IA NO: GA/1/2026, GA/2/2026

M/S. PRACHA AALLOY PRIVATE LIMITED
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE SMITA DAS DE
Date : 14th September, 2026.

Appearance:
Ms. Gunjan Bahety, Adv.
Mr. Dhiraj Tiwari, Adv.
Mr. Khushal Mittal, Adv.
... for the petitioner.

Mr. Kaushik Dey, Adv.
Mr. Tapan Bhanja, Adv.
... for the Customs Authority.

Mr. Amit Sharma, Adv.
Mr. Abhishek Kr. Agrahari, Adv.
... for the UOI.

The Court: The petitioners have approached this Court under Article 226 of the Constitution of India, inter alia, assailing the order dated 22.07.2026 passed by the respondent no. 4

Learned counsel appearing for the Revenue raises a strong preliminary objection as to the maintainability of the writ petition on the ground that the Customs Act, 1962 (hereinafter referred to as the said act) provides an efficacious alternative statutory remedy by way of an appeal. The impugned order is appealable under Section 128 of the Customs Act, 1962 before the Commissioner of Customs (Appeals) upon payment of statutory pre-deposit in terms of section 129 E of the said Act. The petitioner, therefore, cannot directly

invoke the extraordinary writ jurisdiction of this court. The said Act is a self-contained Code providing complete machinery for departmental appeals.

In this context the respondent places reliance upon the judgment of the Hon'ble Apex Court in the case of **Radha Krishan Industries vs. State of Himachal Pradesh reported in 2021 (48) GSTL 113 (SC)** at para 27 wherein it has been categorically observed that the High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is, where an "effective alternative remedy" is available to the aggrieved persons. The Hon'ble Apex Court has set out certain exceptions to the Rule of alternative remedy, which the petitioner has failed to fulfill to fall within the exceptions to maintain the present writ petition. Paragraph 27 is reproduced below for convenience:

"27. The principles of law which emerge are that:

- (1) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*
- (ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;*
- (iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;*

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

Further reliance has been placed in the case of **Securities and Exchange Board of India vs. Mangalore Stock Exchange reported in (2005) 10 SCC 274** wherein it has also been held by the Hon’ble Apex Court that issue of maintainability shall be decided at the very threshold before considering the matter on merits.

The writ petitioner deliberately bypassed the alternative statutory remedy and approached this Court by invoking Article 226 of the Constitution of India which is not sustainable in the eye of law and the writ petition is liable to be dismissed on this score alone.

Per contra, the petitioner strenuously argues and submits that the existence of an alternative remedy does not absolutely oust the writ jurisdiction

under Article 226 of the Constitution. It is a self imposed rule of judicial discretion governing entertainability and does not, by itself, render the writ petition not maintainable.

The Learned Counsel places reliance upon the ruling of the landmark judgment of the Hon'ble Apex Court in the case of **Whirlpool Corporation vs. Registrar of Trademark** and **Godrej Sara Lee Vs. Excise and Taxation Officer** and submits that an alternative remedy is a rule of discretion and not an absolute jurisdiction bar. Writ Petition is eminently maintainable, by passing statutory remedies where the impugned order violates fundamental rights, principles of natural justice or suffers from a patent lack of jurisdiction. The adjudicating authority has created an unlegislated category of prohibition out of subjective moral biases, making the order an absolute nullity.

This Court has considered the rival submissions, with regard to the preliminary objection as to the maintainability of the writ petition. While the availability of an alternative remedy is ordinarily a ground for exercise of restraint under Article 226, it is not an absolute bar. In the present case, the petitioners have raised a specific issue as to whether the description "obscene adult sex toys" and the alleged applicability of Section 292 of the Indian Penal Code, 1860, without identification of a specific statutory or notification-based prohibition, can by themselves render the goods "prohibited goods" under Section 11 of the Customs Act, 1962.

The preliminary objection of the Revenue must fail, since it is no longer *res integra*, that when a statutory authority acts completely outside the boundaries of objective law and enters the realm of subjective morality thereby severely affecting a citizen's fundamental right to trade, the High Court will not

shut its doors. The present case involves systematic misrepresentation of trade regulations across various custom houses, which necessitates and authoritative judicial pronouncements rather than a routine departmental appeal.

The precise statutory basis for the alleged prohibition, as also the basis for invoking Section 111(m) of the said Act, therefore, requires consideration.

At this stage, this Court finds that the writ petition is maintainable and the said matter can be heard on merits as prayed for in the present writ petition. This court does not express any opinion on the merits of the matter. Let the matter, WPO/370/2026 along with GA 1 2026 be listed on 09.10.2026.

In the mean time the respondents are directed to file a short affidavit-in-opposition within two weeks from date. Reply, if any, may be filed by the petitioners within one week thereafter.

Law notes filed by the respective parties be kept on record.

GA 2 of 2026

Certain inadvertent typographical errors have crept into the Order dated 21st August, 2026, which are indicated and corrected as under:-

In 1st page the last line of last paragraph the number “4036” be corrected and shall be read as “4636”.

In 3rd page the 4th line of Paragraph No.2, in W.P.C. No. 6731/2020 be corrected and shall be read as “W.P.C. No. 3542/2025” and Rajat Kumar Vs. Commissioner shall be read as Techsync Vs. The Superintendent of Customs SIIB ACC Imports and Exports.”

In 4th page the 4th line of Paragraph No.1, the number “4036” be corrected and shall be read as “4636” and the amount of Rs. 34,20,319.65 be corrected and shall read as amount Rs. 7,00,000/-.

The order dated 21st August, 2026 is corrected to the above extent. The other portions of the order shall remain unaltered.

Accordingly, GA/2/2026 is allowed and disposed of.

(SMITA DAS DE, J.)

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