

2025:PHHC:135347-DB



**103 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-16286-2025
Date of Decision: September 26, 2025

M/S ARVIND FASHION LIMITED

..... Petitioner

Versus

STATE OF HARYANA AND OTHERS

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Chetan Jain, Advocate for the petitioner.

Mr. Sourabh Goel, Addl. AG, Haryana.

LISA GILL, J.

1. Prayer in this petition is for setting aside order-in-appeal dated 06.02.2025 (Annexure P-8) passed by Joint Commissioner of State Tax (Appeals)-cum-Appellate Authority, Gurugram, Haryana - respondent No. 2 whereby appeal filed by present petitioner under Section 107 of Haryana Goods and Services Tax Act, 2017/Central Goods and Services Tax Act, 2017 (for short – ‘HGST/CGST Act’) is alleged to have been incorrectly dismissed on the ground of delay without excluding the period spent by petitioner in pursuing the

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application under Section 161, seeking rectification of order dated 15.07.2024 passed under Section 73 of HGST/CGST in Form DRC-07.

2. Learned counsel for petitioner submits that petitioner is engaged primarily in retail and warehousing services pertaining to garments falling under HSN 61142000, 61143010, 61149090, suitcases and footwear falling under HSN 42021110 and 64031910, respectively. Show cause notice dated 16.05.2024 in form DRC-01 under Section 73 of HGST/CGST Act was issued to petitioner by Excise and Taxation Officer of State Tax-cum-Proper Officer, Gurugram pointing out certain discrepancies on the basis of which total demand of Rs.19,44,17,565/- (inclusive of interest and penalty was proposed). Reply dated 18.06.2024 was filed by petitioner and respondent No. 3 passed final order dated 15.07.2024 under Section 73 of HGST/CGST Act in DRC-07, creating a demand of Rs.12,07,19,294/- for FY 2019-20.

3. It is submitted that petitioner filed rectification application dated 22.08.2024 under Section 161 of HGST/CGST Act because it was felt that order was suffering from patent error and mistake apparent on record i.e. a difference in claim of ITC as per GSTR-2A vis-à-vis GSTR-3B return and imposition of GST on the figure of 'other expenses' as shown in the consolidated financial annual statement of petitioner – Company on PAN India basis instead of figures exclusively pertaining to State of Haryana. This rectification application was rejected on 28.01.2025 allegedly without any notice to petitioner and without providing him any opportunity of hearing and without advertence to the facts of case.

4. Learned counsel for petitioner further submits that petitioner immediately and without any delay filed an appeal dated 29.01.2025 challenging

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both the order-in-original in Form DRC-07 dated 15.07.2024 as well as rejection of its rectification application vide order dated 28.01.2025. Pre-deposit of 10% of disputed tax amount was also made on 30.01.2025. It is stated that petitioner specifically pleaded in the appeal that time consumed in pursuing the rectification application should be excluded while computing the period of limitation. Learned counsel for petitioner vehemently argues that appellate Authority has grossly erred in dismissing the appeal filed by petitioner under Section 107 of HGST/CGST Act read with section 20 of Integrated Goods and Services Tax Act, 2017 merely on the ground of delay, without excluding the period spent in rectification proceedings. It is, thus, prayed that this writ petition be allowed.

5. Learned counsel for State has refuted the arguments as raised while submitting that it was always open to petitioner to file an appeal while pursuing the rectification application. Dismissal of the writ petition is sought.

6. We have heard learned counsel for parties and have carefully perused the file with their able assistance.

7. Passing of final order under Section 73 of HGST/CGST Act in Form DRC-07 on 15.07.2024; filing of rectification application on 22.08.2024 by petitioner under Section 161 of HGST/CGST Act; dismissal thereof on 28.01.2025 and filing of appeal under Section 107 of HGST/CGST Act by petitioner on 29.01.2025 alongwith pre-deposit of 10% of disputed tax on 30.01.2025 is a matter of record and not in dispute. At this stage, it is useful to refer to Sections 161 and 107 of HGST/CGST Act, which are reproduced hereunder:-

“Section 161. Rectification of errors apparent on the face of record.- Without prejudice to the provisions of Section 161, and

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notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.”

“Section 107. Appeals to Appellate Authority.-

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order

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under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid-

- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- (b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty crore rupees, in relation to which the appeal has been filed.

Provided that in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equal to ten per cent. of the said penalty has been paid by the appellant.

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(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under Section 73 or Section 74.

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(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

(16) Every order passed under this section shall, subject to the provisions of [section 108](#) or [section 113](#) or [section 117](#) or [section 118](#) be final and binding on the parties.”

8. It is, thus, apparent that rectification application was filed well within the period of limitation and appeal under Section 107 of HGST/CGST Act was filed within two days of passing of order dated 28.01.2025, dismissing the application seeking rectification. Appellate authority in impugned order dated 06.02.2025 has dismissed the appeal while holding that it is time barred as it was filed 109 days beyond the period of limitation of three months. It is stated that appeal has been filed beyond the period of limitation of three months for challenging order dated 15.07.2024 as it was filed on 30.01.2025 and is, thus, delayed by 109 days.

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9. In the given factual matrix, where petitioner was admittedly awaiting decision upon its rectification application it cannot be held that there was delay in filing of the appeal. We do not find any merit in the argument raised by learned counsel for respondents to the effect that it was open to petitioner to have filed an appeal alongside the rectification application. This needless to say would lead to an anomalous situation. In a scenario where petitioner's rectification application may have been allowed, there was a possibility that filing of appeal would not even be necessary. In such a scenario, rectification, if made, would have merged in the original order. In the given factual matrix, it cannot be assumed and presumed that period of limitation to challenge original assessment order would begin from the date on which it was passed and the period spent during pendency of rectification application is not to be excluded.

10. At this juncture, we reiterate that petitioner has promptly filed, firstly, the rectification application well within the period of three months as provided and appeal was filed, alongwith pre-deposit of 10% of disputed tax immediately on passing of order dated 28.01.2025. Moreover, nothing has been pointed out or even pleaded by respondents to suggest any ulterior motive on the part of petitioner in filing rectification application. In the given scenario, order dated 06.02.2025 is not sustainable. Period spent in pursuing the rectification application should have been excluded.

11. Present writ petition has been entertained as the Tribunal under HGST/CGST Act has not started with the hearing of matters.

12. No other argument was addressed.

13. Keeping in view the facts and circumstances as above, order dated

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06.02.2025 passed by Joint Commissioner of State Tax (Appeals)-cum-Appellate Authority, Gurugram, Haryana is set aside and the matter remitted to Appellate Authority to decide the same on the merits of matter in accordance with law.

- 14. Writ petition is disposed of accordingly.
- 15. There is no expression of opinion on merits of the matter.

(LISA GILL)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

September 26, 2025
Rts

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No