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GSTAT to Examine Whether Mandatory Pre-Deposit is Payable on Penalty Order Only Passed Prior to October 1, 2025

The Hon'ble GST Appellate Tribunal, Hyderabad Bench in the case of ***Hero Wiretex Limited v. Commissioner (Appeals), Hyderabad Zone & Ors. [Filing No. 2026056101000326, order dated July 02, 2026]*** issued notice to the Revenue in an appeal challenging penalties imposed under Section 122(1)(ii) and Section 122(1)(vii) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**"), where the Registry had raised a defect for non-payment of the statutory pre-deposit at the time of filing. Recording the Appellant's contention that no pre-deposit is payable since the impugned order was passed prior to October 1, 2025, being the date from which pre-deposit was mandated for penalty-only appeals, and that the adjudication itself was without jurisdiction for want of a properly appointed officer, the Tribunal held that the appeal could be considered for admission based on the submissions to be made by the Respondents and directed the Revenue to file counter affidavits within four weeks.

Facts:

Hero Wiretex Limited ("**the Appellant**") was subjected to penalties simpliciter under Section 122(1)(ii) [issuance of any invoice or bill without supply of goods or services] and Section 122(1)(vii) [taking or utilising input tax credit without actual receipt of goods or services] of the CGST Act, in respect of the Financial Years 2017-18 and 2018-19. Aggrieved by the order passed by the Commissioner (Appeals), Hyderabad Zone ("**the Respondent**"), the Appellant preferred a second appeal before the GST Appellate Tribunal, Hyderabad Bench.

Upon scrutiny of the appeal, the Registry raised a defect with regard to non-payment of the mandatory pre-deposit at the time of filing of the appeal.

The Appellant contended that there is no requirement to pay such pre-deposit on three grounds. Firstly, the impugned order is non-est inasmuch as the proper officer was not

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appointed at the relevant point of time either to issue the Show Cause Notice or to adjudicate the matter.

Secondly, the dispute pertains to FY 2017-18 and FY 2018-19, when there were no clear directions with regard to payment of pre-deposit in cases involving only penalty.

Thirdly, the impugned order was passed prior to October 1, 2025, i.e., the date on which pre-deposit was mandated for penalty-alone cases, and the said amendment does not have retrospective effect.

On the above premise, the Appellant prayed that a lenient view be taken and the appeal be admitted without insisting upon payment of pre-deposit. The Learned Departmental Representative took notice on behalf of the Respondents.

Issue:

Whether the mandatory pre-deposit is payable in respect of an appeal filed before the Appellate Tribunal against an order imposing penalty alone, without any demand of tax, where such order was passed prior to October 1, 2025, i.e., before the pre-deposit requirement for penalty-only appeals came into force?

Held:

The Hon'ble GST Appellate Tribunal, Hyderabad Bench in **Filing No. 2026056101000326** held as under:

- Observed that, the issue in contention is imposition of penalties alone under Section 122(1)(ii) and Section 122(1)(vii) of the CGST Act, and the defect raised on the appeal relates to non-payment of pre-deposit at the time of filing.
- Noted that, the Appellant contended that the order is non-est in view of the fact that the proper officer was not appointed at that point of time to adjudicate and to issue the Show

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Cause Notice, that the issue pertains to the years 2017-18 and 2018-19 when there were no clear directions with regard to pre-deposit on penalty-only cases, and that the impugned order was passed prior to October 1, 2025, being the date on which pre-deposit was mandated for penalty-alone cases, which does not have retrospective effect.

- Observed that, “.....we are not inclined to go into the merits and we are of the opinion that the appeal could be considered for admission based on the submissions to be made by the respondent”.
- Directed that, the Registry may issue notice to the Respondents calling for the counters on the grounds of the appeals filed, within a period of four weeks.
- Held that, the case may be listed after four weeks for considering admission of the appeal.

Our Comments:

Under the scheme of the CGST Act as originally enacted, the quantum of pre-deposit under Section 107(6)(b) of the CGST Act (first appeal) and Section 112(8)(b) of the CGST Act (appeal to the Appellate Tribunal) was computed with reference to the “remaining amount of tax in dispute”. Consequently, where an order demanded penalty alone without any corresponding demand of tax, as is typically the case in proceedings under Section 122 of the CGST Act, there was no statutory basis to insist upon any pre-deposit, save for the specific carve-out for detention cases under Section 129(3) of the CGST Act, which attracted 25% of the penalty under the erstwhile proviso to Section 107(6) of the CGST Act. The Finance Act, 2025 plugged this gap by substituting the proviso to Section 107(6) of the CGST Act to provide for pre-deposit of 10% of the penalty, and by inserting a proviso to Section 112(8) of the CGST Act mandating a further sum equal to 10% of the disputed penalty for appeals before the Appellate Tribunal in penalty-only cases. These amendments were brought into force w.e.f. October 1, 2025 vide **Notification No. 16/2025-Central Tax dated September 17, 2025**. The short but significant question which the GSTAT, Hyderabad Bench has now kept open at the admission stage is

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whether this mandate can be applied to appeals arising out of orders passed prior to October 1, 2025.

It is a well-settled principle that the right of appeal is not a mere matter of procedure but a substantive right, which vests in a litigant on the date of institution of the lis, i.e., commencement of the original proceedings, and such vested right can be taken away or made more onerous only by a subsequent enactment which is retrospective either expressly or by necessary intendment. The Hon'ble Supreme Court in ***Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh [AIR 1953 SC 221]*** held that an amendment requiring deposit of the assessed amount as a pre-condition for entertaining an appeal cannot be applied to proceedings initiated before the amendment, since a pre-existing right of appeal is not destroyed or impaired by a subsequent, more onerous condition unless the amendment is made retrospective in clear terms. The Constitution Bench in ***Garikapati Veeraya v. N. Subbiah Choudhry [AIR 1957 SC 540]*** laid down that the right of appeal is a vested right which accrues to the litigant on and from the date the lis commences and is governed by the law prevailing at the date of institution of the original proceeding, and not by the law prevailing at the date of the decision or the filing of the appeal. Similarly, in ***State of Bombay v. Supreme General Films Exchange Ltd. [AIR 1960 SC 980]*** it was held that an impairment of the right of appeal by imposing a more onerous condition is not a matter of procedure and cannot operate retrospectively unless the enactment says so expressly or by necessary intendment. The same principle was reiterated in ***Ramesh Singh v. Cinta Devi [(1996) 3 SCC 142]***, wherein a newly introduced pre-deposit requirement was held to apply prospectively.

Applying the same reasoning under the GST regime, the Hon'ble Calcutta High Court in ***Barjinder Singh Kohli [order dated November 03, 2025]*** has taken the view that the proviso inserted in the pre-deposit provisions by the Finance Act, 2025 operates prospectively only, and appeals directed against penalty-only orders communicated before October 1, 2025 would not attract the newly introduced pre-deposit. Should the Appellate Tribunal adopt the same view, a large class of legacy penalty appeals, particularly those arising out of Section 122

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proceedings for FY 2017-18 onwards which form part of the backlog of appeals required to be filed by June 30, 2026, would stand relieved of the pre-deposit burden at the Tribunal stage.

The Appellant's first ground, that the adjudicating authority was not a duly appointed "proper officer" within the meaning of Section 2(91) of the CGST Act at the relevant time, rendering both the Show Cause Notice and the adjudication order non-est, raises a pure question of jurisdiction which can be urged at any stage of the proceedings. The assignment of functions of the proper officer flows from **Circular No. 3/3/2017-GST dated July 05, 2017** and **Circular No. 31/05/2018-GST dated February 09, 2018**, and the competence of the officer issuing the notice and passing the order must be tested against such assignment. Notably, the Tribunal has consciously refrained from expressing any view on this ground at this stage and has kept it open for consideration along with the admission of the appeal.

Pending an authoritative pronouncement, taxpayers whose penalty-only orders were passed or communicated prior to October 1, 2025 and who face defect memos from the GSTAT Registry for non-payment of pre-deposit may respond by placing on record the date of the impugned order and its communication, and by specifically invoking the settled law on the vested right of appeal and the prospective operation of the Finance Act, 2025 amendments. At the same time, taxpayers should weigh the commercial cost of contesting the defect against payment of 10% of the penalty under protest, with liberty to seek refund with applicable interest upon success, particularly where the June 30, 2026 (extended to July 31, 2026) outer limit for filing legacy appeals is proximate and the risk of the appeal being treated as defective cannot be countenanced. Where the very jurisdiction of the adjudicating officer is assailable, the proper officer ground should be specifically raised in the memorandum of appeal, as it goes to the root of the matter. The final view of the Tribunal on admission will have far-reaching consequences for the entire class of legacy penalty appeals under Section 122 of the CGST Act and merits close monitoring.

Relevant Provisions:

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Proviso to Section 107(6) of the Central Goods and Services Tax Act, 2017 (as substituted by the Finance Act, 2025, w.e.f. October 1, 2025)

“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.”

Proviso to Section 112(8) of the Central Goods and Services Tax Act, 2017 (as inserted by the Finance Act, 2025, w.e.f. October 1, 2025)

“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, in addition to the amount payable under the proviso to sub-section (6) of section 107, has been paid by the appellant.”

Section 122(1) of the Central Goods and Services Tax Act, 2017 (relevant clauses)

“122. Penalty for certain offences.-

(1) Where a taxable person who—... (ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder; ... (vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder; ... he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded ... or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.”

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