No 10% pre-deposit required on any Penalty-only order from SCN issued prior to October 01, 2025

The Hon'ble Delhi High Court in ***Gaurav Jain & Anr. v. Joint Commissioner (Appeals-II), CGST Delhi Zone & Anr. [W.P.(C) No. 8414 of 2026 dated July 31, 2026]*** held that the proviso to Section 107(6) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**), as substituted with effect from October 01, 2025, mandating pre-deposit of ten (10%) per cent of the penalty for filing an appeal against an order demanding penalty without involving any demand of tax, does not govern an appeal arising out of adjudicatory proceedings initiated by a Show Cause Notice issued prior to October 01, 2025, and held that the right of appeal, together with the conditions governing its exercise, vests on the date of commencement of the *lis*, i.e., the date of issuance of the Show Cause Notice, and not on the date of the Order-in-Original or the date of filing of the appeal.

Facts:

Gaurav Jain & Anr. (**"the Petitioners"**) were issued a Show Cause Notice dated June 25, 2025 (**"the SCN"**) alleging that they were the key persons and main beneficiaries of a network of non-existent and fictitious entities through which Input Tax Credit (**"ITC"**) had been wrongfully availed and passed on. The SCN invoked Section 122(1A) of the CGST Act and proposed imposition of penalty of Rs. 137,16,19,588/- for the alleged passing on of ITC and Rs. 209,38,99,268/- for the alleged availment of ITC, upon each of the Petitioners in their individual capacity.

The Petitioners filed their written replies and were represented at the personal hearing. Thereafter, the Adjudicating Authority passed the Order-in-Original dated December 16, 2025 (**"the Impugned Order"**), imposing penalties aggregating to Rs. 346,55,18,856/- upon each Petitioner under Section 122(1A) of the CGST Act read with the corresponding State enactments and Section 20 of the Integrated Goods and Services Tax Act, 2017. No demand of tax was raised against the Petitioners in their individual capacity.

On the date of issuance of the SCN, the proviso to Section 107(6) of the CGST Act prescribed a percentage-based pre-deposit only in respect of an appeal against an order passed under Section 129(3) of the CGST Act and did not prescribe any percentage-based pre-deposit for an appeal against a only disputed penalty-only order under Section 122(1A) of the CGST Act. By virtue of Section 129 of the Finance Act, 2025, the said proviso was substituted with effect from October 01, 2025, so as to require deposit of ten per cent of the penalty in every case of an order demanding penalty without involving demand of any tax. If the substituted proviso were to apply, each Petitioner would be required to deposit approximately Rs. 34.66 crore merely to institute the appeal.

The Petitioners addressed an e-mail dated March 06, 2026 to the Appellate Authority seeking waiver or relaxation of the pre-deposit on the ground of financial hardship, which was declined vide communication dated March 09, 2026 on the ground that the Appellate Authority possessed neither statutory mandate nor inherent discretionary power to relax, reduce or waive the prescribed pre-deposit. Aggrieved thereby, the Petitioners filed the present writ petition.

<u>Petitioners' Contentions:</u>

The Petitioners contended that the right of appeal is a substantive right which vests upon commencement of the *lis* and carries with it the conditions governing its exercise as they stood on that date. The *lis* in the present case commenced upon issuance of the SCN dated June 25, 2025, whereby the Department asserted a definite proposition of personal penal liability and called upon the Petitioners to answer the allegations. On that date, no percentage-based pre-deposit was prescribed for an appeal against a only disputed penalty-only order under Section 122(1A) of the CGST Act, and the subsequent substitution, which materially burdens the appellate remedy, cannot govern proceedings already initiated. In the alternative, it was contended that the substituted proviso is constitutionally vulnerable inasmuch as it prescribes an uncapped and inflexible pre-deposit in penalty-only cases, whereas the deposit in respect of disputed tax is subject to a statutory ceiling of Rs. 20 crore.

Revenue's Contentions:

The Revenue contended that no enforceable right of appeal existed until the Impugned Order was passed on December 16, 2025, and since the appellate remedy became available only after the substituted proviso had come into force, the appeal must comply with the law prevailing on the date of its filing. It was urged that the opening words of Section 107(6), namely "No appeal shall be filed", make the date of filing determinative, and that the earlier proviso stood repealed upon substitution, there being no saving provision preserving the earlier regime. It was further submitted that, save for the issuance of the SCN, every subsequent step in the adjudicatory process, including the replies, the personal hearing and the Impugned Order, occurred after October 01, 2025.

Issue:

Whether the proviso to Section 107(6) of the CGST Act, as substituted with effect from October 01, 2025, requiring pre-deposit of ten per cent of the penalty for filing an appeal against a penalty-only order, applies to an appeal arising out of adjudicatory proceedings initiated by a Show Cause Notice issued prior to the substitution, although the Order-in-Original came to be passed thereafter?

Held:

The Hon'ble Delhi High Court in ***W.P.(C) No. 8414 of 2026*** held as under:

Observed that, the right of appeal is a creature of statute, but is substantive and not merely procedural in character. Once vested, it cannot be taken away, impaired or subjected to a more onerous condition unless the legislature has manifested such intention expressly or by necessary intendment. Although an appeal can ordinarily be filed only after an adverse decision is rendered, the right to pursue the proceedings through the appellate hierarchy attaches to the *lis* at its commencement, and the adverse order merely makes that right capable of exercise.

Noted that, the substituted proviso operates unevenly across categories. In respect of an order under Section 129(3) of the CGST Act, the deposit stands reduced from twenty-five per cent to ten per cent, whereas for other penalty-only orders, including a wholly disputed penalty under Section 122(1A) of the CGST Act, a percentage-based pre-deposit has been introduced for the first time. The amendment is therefore beneficial for one class of appellants and "more onerous for a person seeking to challenge a penalty-only order" of the nature involved in the present case.

Noted that, the language of Section 107(6) of the CGST Act does not postpone compliance with the pre-deposit requirement until the stage of hearing or final disposal of the appeal; it expressly declares that no appeal shall be filed unless the prescribed payment has been made. The pre-deposit is thus attached to the institution of the appeal itself and constitutes a statutory condition of access to the appellate forum, upon compliance whereof recovery of the balance stands stayed under Section 107(7) of the CGST Act.

Observed that, the principle laid down in ***Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh & Ors. [1953 SCC OnLine SC 33]***, as crystallised by the Constitution Bench in ***Garikapati Veeraya v. N. Subbiah Choudhry & Ors. [(1957) 1 SCC 180]*** and elaborated in ***Videocon International Ltd. v. Securities and Exchange Board of India [(2015) 4 SCC 33]***, is that the legal pursuit of a remedy through suit, appeal and further appeal constitutes one connected proceeding, that the appellate remedy is conferred as a "package" comprising the forum, scope and limitations subject to which it may be pursued, and that the package available at the commencement of the *lis* constitutes the vested substantive right of the litigant, which can be taken away only by express enactment or necessary intendment.

Noted that, the material event in the present case is the SCN dated June 25, 2025, which invoked Section 122(1A) of the CGST Act, identified the Petitioners as key persons and main beneficiaries and proposed two quantified penalties against each of them. There is an unbroken continuity between the SCN, the adjudication and the appellate remedy arising from the resulting order, and therefore the *lis* commenced no later than June 25, 2025. The submission of replies and participation in the personal hearing after October 01, 2025 does not postpone the commencement of the proceedings, the relevant inquiry being when the Department asserted the liability and required the Petitioners to answer it.

Noted that, the words "no appeal shall be filed" merely determine the stage at which compliance is required where the substituted proviso applies, and do not answer the anterior question as to which appellate regime governs proceedings initiated before the substitution. To treat those words as conclusive of temporal application would make the date of filing determinative in every case and would render the principles in *Hoosein Kasam Dada* (supra) and *Videocon International* (supra) otiose.

Observed that, though substitution ordinarily displaces the earlier provision, it does not by itself divest rights already accrued under the earlier law; the earlier provision continues to govern, for the limited purpose of preserving the vested appellate right, proceedings which commenced while it was in force. Further, the absence of an express saving clause does not assist the Revenue, since a non-retrospective amendment does not disturb rights crystallised upon commencement of the *lis* unless the statute expressly or by necessary intendment provides otherwise.

Observed that, a legislative intention to impair a vested appellate right cannot be inferred merely because the amendment is expressed in general terms. Necessary intendment requires something in the language, scheme or unavoidable operation of the enactment which is inconsistent with the continuance of the earlier right, and no such inconsistency is discernible, the substituted proviso being capable of full and effective operation in respect of adjudicatory proceedings initiated on or after October 01, 2025. Neither the automatic stay under Section 107(7) of the CGST Act nor the object of discouraging frivolous appeals can supply retrospective operation which the statutory language does not contain.

Observed that, the decisions relied upon by the Revenue are distinguishable. In ***Hardeodas Jagannath v. State of Assam & Ors. [(1969) 2 SCR 261]***, the reassessment proceedings themselves commenced after the amendment, and the case merely establishes that an anterior taxable period or transaction does not preserve the earlier appellate regime. In ***Surinder Singh Deswal & Ors. v. Virender Gandhi [(2019) 11 SCC 341]***, Section 148 of the Negotiable Instruments Act, 1881 operates after institution of the appeal, is discretionary and does not prohibit filing, unlike the substituted proviso which operates as a bar at the threshold. In ***Chandra Sekhar Jha v. Union of India & Anr. [(2022) 14 SCC 152]***, substituted Section 129E of the Customs Act, 1962 contained an express transitional clause and the assessee therein sought to combine the favourable features of two regimes, whereas Section 107(6) of the CGST Act contains no comparable transitional clause. ***Barjinder Singh Kohli v. Assistant Commissioner of Revenue & Ors. [W.P.A. No. 19676 of 2025]*** concerned an appeal already filed before the substitution came into force.

Held that, the Finance Act, 2025 neither expressly nor by necessary implication subjects adjudicatory proceedings initiated before October 01, 2025 to the newly introduced ten per cent deposit in penalty-only cases, and accordingly the substituted proviso to Section 107(6) of the CGST Act does not govern the appeals arising from the SCN dated June 25, 2025, the appellate remedy of the Petitioners being governed by Section 107(6) of the CGST Act as it stood on that date.

Held that, while an Appellate Authority, being a creature of statute, possesses no inherent or implied power to waive or reduce an applicable statutory pre-deposit on the ground of financial hardship, and the communication dated March 09, 2026 is correct to that extent, the Petitioners are nevertheless entitled to relief on a different basis, since the substituted proviso does not govern their vested appellate right, and consequently the question of waiver does not arise.

Held that, an erroneous assumption made by a litigant as to the applicable law cannot render applicable a statutory provision which otherwise does not govern the proceedings, nor can there be any estoppel against the correct interpretation of a statute; hence the Petitioners' initial prayer for waiver does not determine the statutory regime applicable to their appeals.

Directed that, the Petitioners are not required to deposit ten per cent of the penalties imposed as a condition for filing their appeals, subject to compliance with Section 107(6)(a) of the CGST Act in respect of any amount admitted, and the Appellate Authority shall register and entertain the appeals without treating such non-payment as a deficiency. The period from March 20, 2026 till the date of the judgment shall stand excluded for computing limitation under Section 107 of the CGST Act, the appeals shall be filed within four weeks, and no coercive steps for recovery shall be taken during the said period.

Held that, since the substituted proviso has been held inapplicable, it is unnecessary to examine its constitutional validity, which is left open for an appropriate case, and the merits of the Impugned Order and the penalties imposed have not been examined, all contentions in that regard being left open for consideration by the Appellate Authority.

Our Comments:

Section 107 of the CGST Act confers upon any person aggrieved by a decision or order passed by an adjudicating authority the remedy of appeal before the Appellate Authority within three months from the date of communication of such order, extendable by one month under Section 107(4) of the CGST Act upon sufficient cause being shown. Sub-section (6) of Section 107 of the CGST Act conditions the very institution of the appeal upon payment, in full, of the admitted component of tax, interest, fine, fee and penalty, and of a sum equal to ten per cent of the remaining amount of tax in dispute, subject to a total ceiling of Rs. 40 crore (CGST+SGST).

Prior to October 01, 2025, the proviso thereto operated in a narrow field and required deposit of twenty-five per cent of the penalty only in appeals against orders passed under Section 129(3) of the CGST Act relating to detention and seizure of goods and conveyances in transit.

By Section 129 of the Finance Act, 2025, the said proviso was substituted, with effect from October 01, 2025, to read: ***"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."*** The substitution has a dual and asymmetric effect. For orders under Section 129(3) of the CGST Act, the burden stands relaxed from twenty-five per cent to ten per cent. For every other penalty-only order, most significantly an order under Section 122(1A) of the CGST Act fastening personal penalty upon a person who retains the benefit of a transaction and at whose instance it is conducted, and orders under Section 122(3), Section 125 and Section 127 of the CGST Act, a percentage-based pre-deposit has been introduced for the first time where none previously existed. **Critically, unlike the ten per cent deposit on disputed tax, the pre-deposit on penalty carries no monetary ceiling, with the result that in high-value penalty proceedings the threshold cost of accessing the appellate forum can be prohibitive, as the facts of the present case starkly illustrate.**

The judgment is a significant reaffirmation of the settled distinction between a substantive right and a procedural regulation. The Hon'ble Court has correctly anchored the temporal test not to the date of the Order-in-Original, nor to the date of filing of the appeal, but to the date on which the *lis* commences, which in the scheme of the CGST Act is ordinarily the date of issuance of the show cause notice. This finds support in ***Armour Security (India) Ltd. v. Commissioner, CGST Delhi East & Anr. [2025 SCC OnLine SC 1700]***, wherein the Hon'ble Supreme Court recognised that formal adjudicatory proceedings under the CGST Act commence upon issuance of the show cause notice. The reasoning follows the classic line of authority beginning with *Hoosein Kasam Dada (India) Ltd.* (supra), where an amendment requiring deposit of the entire assessed tax was held inapplicable to an appeal arising from assessment proceedings commenced earlier, notwithstanding that both the assessment order and the appeal post-dated the amendment; the Constitution Bench in *Garikapati Veeraya* (supra), which held that the institution of a suit carries with it the implication that all rights of appeal then in force are preserved; and *Videocon International Ltd.* (supra), which conceptualised the appellate remedy as a "package" that vests at the commencement of the dispute.

Equally instructive is the manner in which the Hon'ble Court has harmonised, rather than doubted, the authorities cited by the Revenue. *Hardeodas Jagannath* (supra) is confined to the proposition that an anterior assessment period or transaction does not, by itself, preserve the earlier appellate regime where the proceedings culminating in the appeal themselves commenced after the amendment. *Surinder Singh Deswal* (supra), read with ***Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Ltd. [2023 INSC 822] and Muskan Enterprises v. State of Punjab [2024 INSC 1046],*** turns upon the discretionary and post-institution character of Section 148 of the Negotiable Instruments Act, 1881, which does not bar the filing of the appeal at all. *Chandra Sekhar Jha* (supra) turned upon an express transitional proviso in substituted Section 129E of the Customs Act, 1962, a feature conspicuously absent from Section 107(6) of the CGST Act. The absence of any transitional or saving clause in the Finance Act, 2025 thus operates against the Revenue rather than in its favour.

At the same time, the boundaries of the ruling deserve careful attention. The Hon'ble Court has expressly affirmed the line of authority, including ***Tecnimont Private Limited v. State of Punjab & Ors. [(2021) 12 SCC 477] and M/s Impressive Data Services Private Limited v. Commissioner (Appeals-I), Central Tax, GST Delhi [2025:DHC:2651-DB],*** holding that where a statutory pre-deposit condition does apply, the Appellate Authority has no inherent or implied power to waive or reduce it on grounds of financial hardship. Relief was granted not by way of dispensation but on the anterior ground that the substituted proviso never attached to the proceedings at all. The constitutional challenge to the uncapped pre-deposit in penalty-only cases, including the argument premised on the disparity vis-à-vis the Rs. 40 crore ceiling applicable to disputed tax, has been expressly left open and awaits an appropriate case; a similar challenge is presently engaging the attention of various High Courts.

Practical takeaways: → **Taxpayers and persons arrayed under Section 122(1A) of the CGST Act, who are in receipt of penalty-only orders passed on or after October 01, 2025, must first examine the date of the show cause notice which initiated the adjudication.** Where the show cause notice pre-dates October 01, 2025, the appeal is liable to be instituted and registered without the ten per cent pre-deposit on penalty, subject only to payment of any admitted liability under Section 107(6)(a) of the CGST Act, and the objection ought to be taken squarely before the Appellate Authority at the stage of filing rather than by way of a belated prayer for waiver.

Conversely, where adjudication commenced by way of issuance of SCN on or after October 01, 2025, the substituted proviso will apply in full rigour, and given the absence of a monetary cap and of any power of waiver, litigants would be well advised to factor the pre-deposit into their appellate strategy at the stage of reply to the show cause notice itself. Departmental authorities, on the other hand, would do well to issue suitable instructions so that appeals arising from pre-amendment show cause notices are not mechanically rejected as defective, thereby avoiding avoidable writ litigation. Given the quantum involved and the recurring nature of the question across jurisdictions, the matter may well travel further, and a definitive pronouncement by the Hon'ble Supreme Court would be welcome.

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