No pre-deposit required for filing appeal before the GSTAT against penalty-only orders where proceedings commenced prior to October 01 2025

The GSTAT, Hyderabad Bench, in the case of ***M/s. Reddy Veeranna Constructions Pvt. Ltd. v. Appeal I Commissioner & Ors. [APL/623/HYD/2026 dated July 28, 2026]*** admitted the appeal without insisting upon payment of statutory pre-deposit under Section 112(8) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) and held that the proviso to Section 112(8) of the CGST Act, inserted vide the Finance Act, 2025 w.e.f. October 01, 2025, prescribing pre-deposit of ten percent of the penalty amount in cases involving demand of penalty only, is prospective in nature and cannot be applied to proceedings initiated before its coming into force, since the right of appeal is a substantive and vested right which accrues on the date of commencement of the *lis* and cannot be curtailed by a subsequently introduced pre-deposit condition.

Facts:

M/s. Reddy Veeranna Constructions Pvt. Ltd. (**"the Appellant"**) was served with a Show Cause Notice dated September 29, 2022 (**"the SCN"**) proposing penalties under Section 122 of the CGST Act, alleging that the Appellant had raised fake invoices without actual supply of goods or services. The Adjudicating Authority, vide Order-in-Original dated August 28, 2023 (**"the OIO"**), levied penalties under Section 122 of the CGST Act read with Section 20 of the Integrated Goods and Services Tax Act, 2017 (**"the IGST Act"**) and under Section 125 of the CGST Act read with Section 20 of the IGST Act.

The appeal preferred by the Appellant before the First Appellate Authority was dismissed vide Order-in-Appeal dated January 12, 2024 (**"the Impugned Order"**), upholding the OIO. Aggrieved thereby, the Appellant preferred an appeal before the Goods and Services Tax Appellate Tribunal (**"the GSTAT"**). The Registry issued a Defect Memo, *inter alia*, pointing out that the Appellant had not made the statutory pre-deposit under Section 112(8) of the CGST Act.

The Appellant contended that the demand in the present case pertains only to penalty and the Impugned Order was issued prior to October 01, 2025, i.e., before the proviso to Section 112(8) of the CGST Act, mandating pre-deposit in penalty-only matters, was brought into force vide the Finance Act, 2025 (Act No. 7 of 2025) dated March 29, 2025. It was further contended that the right to file an appeal is a substantive and vested right which cannot be subjected to a subsequently introduced pre-deposit condition. Reliance was placed upon the judgment of the Hon'ble Supreme Court in ***Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh [(1953) 4 STC 114 (SC)]***, the judgment of the Hon'ble Calcutta High Court in ***Barjinder Singh Kohli v. Assistant Commissioner of Revenue & Ors. [W.P.A. No. 19676 of 2025 dated November 03, 2025], Anukul Bindal v. Union of India [Writ Tax No. 2096 of 2026]*** and the decision of the Andhra Pradesh Sales Tax Appellate Tribunal in *Life Line Aqua*.

The Departmental Representative, on enquiry by the Bench, stated that the Revenue has no objection to the pre-deposit matter being decided on merits.

Issue:

Whether statutory pre-deposit under Section 112(8) of the CGST Act is required for admission of an appeal before the Appellate Tribunal against an order demanding penalty only, where the proceedings were initiated prior to October 01, 2025, i.e., before the proviso to Section 112(8) of the CGST Act came into force?

Held:

The GSTAT, Hyderabad Bench, in ***APL/623/HYD/2026*** held as under:

- Observed that, the quantum of pre-deposit to be made while preferring an appeal before the First Appellate Authority and the Appellate Tribunal is prescribed under

Section 107(6) and Section 112(8) of the CGST Act respectively. Section 112 of the CGST Act envisages payment of the full amount of admitted tax, interest, fine, fee and penalty, and ten percent of the remaining amount of tax in dispute as pre-deposit, in addition to the pre-deposit already made under Section 107 of the CGST Act. The proviso to Section 112(8) of the CGST Act, prescribing pre-deposit of ten percent of the penalty in cases where the order demands penalty without involving any demand of tax, was inserted vide the Finance Act, 2025 (Act No. 7 of 2025) dated March 29, 2025 and made effective only from October 01, 2025.

- Noted that, in the present case, the SCN was issued on September 29, 2022, the OIO was issued on August 28, 2023 and the Impugned Order was issued on January 12, 2024, i.e., all much before the amendment became effective on October 01, 2025. Hence, the ratio of the Hon'ble Calcutta High Court in *Barjinder Singh Kohli* (*supra*), wherein it was held that no pre-deposit can be insisted upon where the appeal is carried against an order pertaining only to penalty with no amount of tax in dispute, and that non-existent statutory conditions affecting the substantive right of appeal cannot be imported into the statute by any authority, squarely applies to the present case.

- Noted that, the Hon'ble Supreme Court in *Hoosein Kasam Dada* (*supra*) has held that the right of appeal is a substantive vested right which accrues when the proceedings commence before the First Instance Authority, and a later amendment imposing an onerous condition of pre-deposit cannot curtail such right in respect of pending proceedings unless retrospective application is clearly expressed or necessarily implied.

- Observed that, the amendment bringing into effect the proviso to Section 112(8) of the CGST Act does not indicate any retrospective application, either expressly or by necessary implication.

- Held that, no pre-deposit is required to be made under Section 112 of the CGST Act in the present appeal and accordingly admitted the appeal, while clarifying that the order shall not prejudice the merits of the case and reserving liberty that, if at the time of final hearing the Tribunal concludes that the Appellant was required to make a pre-deposit of ten percent of the penalty under Section 112(8) of the CGST Act, the Appellant shall be bound to comply with the direction of the Bench.

- Directed that, notice be issued to the Respondents and listed the matter after four weeks.

Our Comments:

Section 112(8) of the CGST Act governs the pre-deposit payable for filing an appeal before the Appellate Tribunal. It requires the appellant to pay, 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 a sum equal to ten percent of the remaining amount of tax in dispute, subject to a maximum of twenty crore rupees, in addition to the amount paid under Section 107(6) of the CGST Act. As the provision stood prior to October 01, 2025, the pre-deposit was pegged only to the "amount of tax in dispute", and consequently, in matters involving demand of penalty alone with no tax in dispute, no pre-deposit was payable for maintaining an appeal before the Appellate Tribunal.

To plug this gap, the Finance Act, 2025 (Act No. 7 of 2025) dated March 29, 2025 inserted a proviso to Section 112(8) of the CGST Act w.e.f. October 01, 2025, providing that in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed unless a sum equal to ten percent of the said penalty, in addition to the amount payable under the proviso to Section 107(6) of the CGST Act, has been paid by the appellant. A corresponding proviso was also inserted in Section 107(6) of the CGST Act for appeals before the First Appellate Authority in penalty-only matters. The present ruling clarifies that this amendment operates prospectively and would not govern appeals arising from proceedings which commenced prior to October 01, 2025.

The ruling rests on the 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* and is governed by the law prevailing on that date. The Hon'ble Supreme Court in ***Garikapati Veeraya v. N. Subbiah Choudhry [AIR 1957 SC 540]*** held that the right of appeal is a vested right accruing on the date of commencement of the proceedings, which can be taken away only by a subsequent enactment expressly or by necessary intendment. Similarly, in *Hoosein Kasam Dada (India) Ltd.* (*supra*), it was held that an amendment imposing a more onerous condition of deposit for entertaining an appeal cannot be applied to proceedings pending on the date of the amendment. In the same vein, the Hon'ble Supreme Court in ***State of Bombay v. Supreme General Films Exchange Ltd. [AIR 1960 SC 980]*** held that an impairment of the right of appeal by imposing a more onerous condition is not a matter of procedure and would not affect pending proceedings.

Notably, an identical view has recently been taken by 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]*** in the context of the *pari materia* proviso to Section 107(6) of the CGST Act, as substituted vide Section 129 of the Finance Act, 2025 w.e.f. October 01, 2025. In that case, penalties aggregating to Rs. 346.55 crore were imposed upon each of the Petitioners under Section 122(1A) of the CGST Act pursuant to an SCN dated June 25, 2025, whereas the Order-in-Original came to be passed on December 16, 2025, i.e., after the substituted proviso had come into force. The Hon'ble Delhi High Court 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 SCN, and not on the date of the Order-in-Original or the date of filing of the appeal, and accordingly, the substituted proviso mandating pre-deposit of ten percent of the penalty does not govern appeals arising out of adjudicatory proceedings initiated by an SCN issued prior to October 01, 2025. The Hon'ble Court further repelled the Revenue's contention that the opening words "no appeal shall be filed" make the date of filing determinative, holding that those words merely fix the stage of compliance and do not answer the anterior question as to which appellate regime governs proceedings initiated before the substitution, and that the absence of a saving clause does not assist the Revenue, since a non-retrospective amendment does not disturb rights crystallised upon commencement of the *lis*.

The judgment in *Gaurav Jain* (*supra*) is significant for the further reason that it anchors the temporal test to the date of the SCN itself, thereby extending the protection even to cases where the adjudication order and the appellate order came to be passed after October 01, 2025, so long as the SCN pre-dates the amendment. The Hon'ble Court also noticed the asymmetric operation of the substituted proviso, inasmuch as the pre-deposit for orders under Section 129(3) of the CGST Act stands reduced from twenty-five percent to ten percent, whereas for other penalty-only orders, including personal penalties under Section 122(1A) of the CGST Act and penalties under Sections 122(3), 125 and 127 of the CGST Act, an uncapped percentage-based pre-deposit has been introduced for the first time, and distinguished the decisions relied upon by the Revenue in ***Hardeodas Jagannath v. State of Assam [(1969) 2 SCR 261], Surinder Singh Deswal v. Virender Gandhi [(2019) 11 SCC 341] and Chandra Sekhar Jha v. Union of India [(2022) 14 SCC 152]***. At the same time, it was clarified, following ***Tecnimont Private Limited v. State of Punjab [(2021) 12 SCC 477],*** that where the pre-deposit condition does apply, the Appellate Authority possesses no inherent or implied power to waive or relax it on the ground of financial hardship.

A combined reading of the present ruling of the GSTAT, Hyderabad Bench qua Section 112(8) of the CGST Act, the ruling of the Hon'ble Delhi High Court in *Gaurav Jain* (*supra*) qua Section 107(6) of the CGST Act, the ruling of the Hon'ble Calcutta High Court in *Barjinder Singh Kohli* (*supra*) and the interim protection granted by the Hon'ble Allahabad High Court in *Anukul Bindal* (*supra*), reflects a consistent judicial view at both the appellate tiers that the pre-deposit requirement introduced in penalty-only matters w.e.f. October 01, 2025 is prospective and cannot be applied to proceedings which commenced prior thereto. It is, however, pertinent to note that the Tribunal has consciously kept the issue open by reserving liberty to direct payment of pre-deposit at the stage of final hearing, if found legally necessary, and the constitutional challenge to the uncapped pre-deposit in penalty-only cases has been expressly left open in *Gaurav Jain* (*supra*) for an appropriate case.

This ruling would come as a significant relief to taxpayers saddled with penalty-only demands, particularly in fake invoicing and E-way bill matters. Taxpayers must first examine the date of the SCN which initiated the adjudication: where the SCN pre-dates October 01, 2025, the appeal, whether before the First Appellate Authority under Section 107 of the CGST Act or before the GSTAT under Section 112 of the CGST Act, may be instituted without payment of the ten percent pre-deposit on penalty, subject only to payment of the admitted liability, and the objection should be taken squarely at the stage of filing itself. Conversely, where the SCN is issued on or after October 01, 2025, the pre-deposit would apply in full rigour without any monetary ceiling or power of waiver, and should be factored into the litigation strategy at the stage of reply to the SCN itself.

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