Pre-Deposit on Penalty Order Cannot Be Demanded Merely Because the GSTAT Appeal Is Filed After October 01, 2025 and Question of Jurisdiction kept open for adjudication proceedings U/S 122

The Hon'ble Supreme Court in ***M/s PVCON Engineering Co. v. CGST and Central Excise, Bhopal & Ors. [SLP (Civil) No. 28059 of 2026 dated September 07, 2026]*** issued notice on the question whether the mandatory pre-deposit for preferring an appeal before the Goods and Services Tax Appellate Tribunal (**"the GSTAT"**) in penalty-only matters, introduced with effect from October 01, 2025, is to be determined with reference to the date of issuance of the Show Cause Notice or the date of filing of the appeal, and in the meanwhile permitted the assessee to file its appeal before the GSTAT, directing that the appeal shall be entertained without any pre-deposit, subject to the outcome of the petition. The order arises out of the judgment of the Hon'ble Madhya Pradesh High Court in ***M/s PVCON Engineering v. CGST and Central Excise Bhopal and Others [Writ Petition No. 24931 of 2026 dated July 06, 2026],*** which had relegated the assessee to the GSTAT and declined to examine the challenge to the pre-deposit condition in writ jurisdiction.

Facts:

M/s PVCON Engineering Co. (**"the Petitioner"**) is engaged in the business of construction work, site development and road construction. On December 02, 2020, an investigation was initiated against the Petitioner by the Directorate General of GST Intelligence (**"the DGGI"**) (**"the Respondent No. 2"**) on the allegation that the Petitioner was involved in passing on irregular Input Tax Credit (**"ITC"**) without actual supply of goods. The GST registration of the Petitioner was cancelled on March 24, 2021.

The Respondent No. 2 issued a Show Cause Notice dated July 26, 2024 (**"the Impugned SCN"**) proposing penalty under Section 122(1)(ii) and (vii) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) read with Section 20 of the Integrated Goods and Services Tax Act, 2017 (**"the IGST Act"**) for the Financial Years 2017-18 and 2018-19. The Additional Commissioner, CGST and Central Excise, Bhopal (**"the Respondent No. 1"**) vide Order-in-Original dated October 03, 2024 (**"the Impugned Order"**) imposed the alleged penalty. No demand of tax was raised against the Petitioner; the Impugned Order was confined to penalty alone.

The Petitioner preferred an appeal under Section 107 of the CGST Act, which was dismissed by the Appellate Authority vide Order-in-Appeal dated October 21, 2025 ("the Impugned OIA") on the ground of limitation. Aggrieved, the Petitioner filed a writ petition before the Hon'ble Madhya Pradesh High Court challenging the Impugned SCN, the Impugned Order and the Impugned OIA, and in the alternative, sought a declaration that the provision mandating pre-deposit under Section 112 of the CGST Act cannot be applied retrospectively.

The Petitioner contended that the Respondent No. 2, being a DGGI officer, was not the "proper officer" for issuing a notice under Section 122 of the CGST Act, since Circular No. 31/05/2018-GST dated February 09, 2018 assigns DGGI officers the functions of proper officer only for issuance of notices under Sections 73 and 74 of the CGST Act. It was further contended that the functions of proper officer were assigned to the Respondents No. 1 and 2 only vide circular dated October 27, 2025, which cannot operate retrospectively so as to validate the Impugned SCN and the Impugned Order.

The Hon'ble Madhya Pradesh High Court, vide judgment dated July 06, 2026, dismissed the writ petition with liberty to approach the GSTAT under Section 112 of the CGST Act. The Hon'ble High Court observed that the questions of violation of principles of natural justice and of the Respondent No. 2 being the proper officer were disputed questions of fact to be examined by the GSTAT, and that the Petitioner cannot be permitted to invoke the writ jurisdiction merely to avoid the condition of pre-deposit. It further observed that once the statute has created a Tribunal comprising judicial as well as technical members to deal with GST disputes, the parties should be relegated to the Tribunal, failing which the very constitution of the Tribunal would be rendered otiose.

Aggrieved, the Petitioner filed a Special Leave Petition before the Hon'ble Supreme Court, contending that the Impugned SCN was issued on July 26, 2024 and the Impugned Order was passed on October 03, 2024, both much prior to the amendment prescribing pre-deposit in penalty-only matters, which came into effect only from October 01, 2025. Therefore, the condition of pre-deposit cannot be made a pre-condition for filing a further appeal before the GSTAT merely because the appeal is being filed after the amendment. The Petitioner also reiterated that the Impugned SCN was not issued by a proper officer. The Revenue, on the other hand, contended that the applicability of the pre-deposit condition is to be determined with reference to the date of filing of the appeal.

Issues:

- Whether the mandatory pre-deposit for filing an appeal before the GSTAT in a penalty-only matter, introduced with effect from October 01, 2025, is to be determined with reference to the date of issuance of the Show Cause Notice and passing of the Order-in-Original, or with reference to the date of filing of the appeal before the GSTAT?
- Whether the Petitioner can be relegated to the GSTAT while the challenge to the applicability of the pre-deposit condition and to the jurisdiction of the DGGI officer to issue a notice under Section 122 of the CGST Act remains undecided?

Held:

The Hon'ble Supreme Court in ***SLP (Civil) No. 28059 of 2026*** held as under:

- Noted that, the Impugned SCN was issued on July 26, 2024 and the Impugned Order was passed on October 03, 2024, whereas the amendment prescribing pre-deposit came into effect only from October 01, 2025, and that the Petitioner contends that the condition of pre-deposit therefore cannot be a condition for filing a further appeal before the GSTAT in this case.

- Noted that, the Petitioner has also raised the contention that the Impugned SCN was not issued by a proper officer.
- Held that, the question raised requires consideration, and accordingly issued notice in the Special Leave Petition.
- Directed that, in the meanwhile, the Petitioner is permitted to file an appeal before the GSTAT and the appeal shall be entertained without a pre-deposit; however, this will be subject to the outcome of the present petition.
- Directed that, the matter be tagged with ***SLP (Civil) Diary No. 28833 of 2026***, where the same question concerning the pre-deposit requirement in respect of orders passed prior to the amendment is pending consideration.

Our Comments:

Section 112(8) of the CGST Act prescribes the amount to be deposited before an appeal is entertained by the GSTAT. Prior to October 01, 2025, the provision required payment of the amount of tax, interest, fine, fee and penalty admitted by the appellant, together with ten per cent of the remaining amount of *tax in dispute*. The pre-deposit being expressly pegged to the "tax in dispute", an order imposing penalty alone, without any demand of tax, attracted no statutory pre-deposit at either appellate stage. This position was consistently accepted in respect of appeals under Section 107(6) as well.

The Finance Act, 2025 (Sections 129 and 130) substituted the proviso to Section 107(6) and inserted a new proviso to Section 112(8) of the CGST Act, mandating a pre-deposit of ten per cent of the disputed penalty amount where the appeal is against an order demanding penalty alone. These amendments were brought into force with effect from October 01, 2025 vide Notification No. 16/2025-Central Tax dated September 17, 2025. The amended provisions do not contain any savings or transitional clause specifying whether the new condition applies with reference to the date of commencement of proceedings or the date of filing of the appeal, and it is precisely this silence that has given rise to the present controversy.

Section 122(1)(ii) and (vii) of the CGST Act impose penalty on a person who issues an invoice or bill without supply of goods or services in violation of the Act or the rules, and on a person who takes or utilises input tax credit without actual receipt of goods or services. Section 20 of the IGST Act applies these provisions *mutatis mutandis* to integrated tax.

On the question of the proper officer, Circular No. 31/05/2018-GST dated February 09, 2018 assigns the functions of proper officer under Sections 73 and 74 of the CGST Act to officers of the DGGI. Whether a DGGI officer can, in the absence of a specific assignment, issue a notice proposing a stand-alone penalty under Section 122 is a question the Hon'ble High Court left open for the GSTAT, and it now survives in the Special Leave Petition as well.

The larger principle at play is that the right of appeal is a substantive and vested right, which accrues to a litigant on the date of institution of the original proceedings and not on the date on which the appeal is actually filed. In ***Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh [AIR 1953 SC 221]***, the Hon'ble Supreme Court held that a subsequent amendment imposing a condition of pre-deposit as a pre-requisite for entertaining an appeal cannot be applied to proceedings that were pending on the date of the amendment, unless the amendment is expressly or by necessary intendment made retrospective. This principle was reiterated by the Constitution Bench in ***Garikapati Veeraya v. N. Subbiah Choudhry [AIR 1957 SC 540],*** which held that the right of appeal vests on the date the lis commences and is governed by the law prevailing on that date, and in State of Bombay v. Supreme General Films Exchange Ltd. [AIR 1960 SC 980], where it was held that impairment of the right of appeal by imposing a more onerous condition is not a matter of procedure and does not affect pending proceedings. More recently, in ***Videocon International Ltd. v. Securities and Exchange Board of India [(2015) 4 SCC 33],*** the Hon'ble Supreme Court conceptualised the appellate remedy as a "package" comprising the forum, scope and conditions subject to which it may be pursued, which vests at the commencement of the lis and can be taken away only by express enactment or necessary intendment.

Applying this principle in the GST context, 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 CGST Act, as substituted with effect from October 01, 2025, does not govern an appeal arising out of adjudicatory proceedings initiated by a Show Cause Notice issued prior to that date, even where the Order-in-Original came to be passed thereafter. In that case, penalties aggregating to Rs. 346.55 crore were imposed on 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 was passed only on December 16, 2025. The Hon'ble Court held that the material event is the date of issuance of the SCN, since there is an unbroken continuity between the SCN, the adjudication and the appellate remedy arising from the resulting order, and the lis commences when the Department asserts the liability and calls upon the noticee to answer it. Significantly, the Hon'ble Court repelled the very contention now urged by the Revenue before the Hon'ble Supreme Court, holding that the opening words "no appeal shall be filed" merely fix the stage at which compliance is required 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 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]*** were distinguished, the last of these on the ground that substituted Section 129E of the Customs Act, 1962 contained an express transitional clause which Section 107(6) of the CGST Act conspicuously lacks.

The position is no different at the GSTAT stage. The GSTAT, Hyderabad Bench, in ***M/s. Reddy Veeranna Constructions Pvt. Ltd. v. Appeal I Commissioner & Ors. [APL/623/HYD/2026 dated July 28, 2026]*** admitted an appeal against a penalty-only order without insisting upon pre-deposit under Section 112(8) of the CGST Act, where the SCN dated September 29, 2022, the Order-in-Original dated August 28, 2023 and the Order-in-Appeal dated January 12, 2024 all pre-dated October 01, 2025. Relying on Hoosein Kasam Dada (supra) and the judgment of the Hon'ble Calcutta High Court in ***Barjinder Singh Kohli v. Assistant Commissioner of Revenue & Ors. [WPA No. 19676 of 2025 dated November 03, 2025],*** wherein it was held that no pre-deposit can be insisted upon where the appeal is against an order pertaining only to penalty with no tax in dispute and that non-existent statutory conditions affecting the substantive right of appeal cannot be imported into the statute by any authority, the Tribunal held that the proviso to Section 112(8) of the CGST Act does not indicate any retrospective application, either expressly or by necessary implication, and is therefore prospective in nature. Notably, the Departmental Representative in that case stated that the Revenue had no objection to the pre-deposit issue being decided on merits, and the Tribunal reserved liberty to direct payment of the pre-deposit at the stage of final hearing, if found legally necessary. Interim protection to the same effect has also been granted by the Hon'ble Allahabad High Court in Anukul Bindal v. Union of India [Writ Tax No. 2096 of 2026].

A contrary line of reasoning is available from the Central Excise regime. When Section 35F of the Central Excise Act, 1944 was substituted with effect from August 06, 2014 to provide for a mandatory pre-deposit, the Hon'ble Delhi High Court in ***Anjani Technoplast Ltd. v. Commissioner of Customs [2015 (326) ELT 472 (Del.)]*** and the Hon'ble Allahabad High Court in ***Ganesh Yadav v. Union of India [2015 (320) ELT 711 (All.)]*** held that the amended provision applied to all appeals filed after the cut-off date irrespective of the date of the Show Cause Notice, whereas the Hon'ble Andhra Pradesh High Court in K. Rama Mohanarao & Co. v. Union of India [2015 (321) ELT 198 (AP)] took the opposite view. However, the substituted Section 35F contained an express second proviso confining the new condition to appeals filed after the commencement of the amendment, which supplied the legislative intent that the amended Sections 107(6) and 112(8) of the CGST Act conspicuously lack. As noticed in Gaurav Jain (supra), the absence of any transitional or saving clause in the Finance Act, 2025 operates against the Revenue rather than in its favour. The Revenue's contention in the present matter, that the date of filing of the appeal governs, therefore has a weaker statutory footing under GST than it had under Central Excise.

The present order is significant on three counts.

First, the Hon'ble Supreme Court has recognised that the question is one of substance warranting notice, and has tagged it with SLP (Civil) Diary No. 28833 of 2026, where the same question concerning orders passed prior to the amendment is pending, so that a uniform and authoritative answer may be expected.

Second, the interim direction that the GSTAT shall entertain the appeal without pre-deposit is in line with the view taken by the Hon'ble Delhi High Court in Gaurav Jain (supra) qua Section 107(6) of the CGST Act, and by the Hon'ble Calcutta High Court in Barjinder Singh Kohli (supra) and the GSTAT, Hyderabad Bench in Reddy Veeranna Constructions (supra) qua Section 112(8) of the CGST Act, reflecting a consistent judicial view at both appellate tiers that the pre-deposit requirement introduced in penalty-only matters is prospective and cannot be applied to proceedings which commenced prior to October 01, 2025.

Third, the order affords immediate relief and serves as a useful precedent for taxpayers facing penalty-only orders arising from proceedings initiated before October 01, 2025, particularly now that the GSTAT has become functional and the window for filing appeals in respect of pre-existing orders is running. The relief, however, is expressly subject to the outcome of the petition, and taxpayers relying on it should be prepared to make the deposit should the Hon'ble Supreme Court ultimately hold that the date of filing of the appeal is determinative.

It is equally noteworthy that the Hon'ble High Court's approach of relegating the assessee to the GSTAT even on the question of jurisdiction of the DGGI officer reflects the growing judicial reluctance to entertain writ petitions in GST matters now that the Tribunal is in place. Assessees should therefore expect that questions of proper officer, natural justice and limitation will ordinarily have to be agitated before the GSTAT in the first instance, and reserve the writ jurisdiction for cases involving pure questions of law or patent lack of jurisdiction.

Practical takeaways: Taxpayers in receipt of penalty-only orders 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 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 per cent pre-deposit on penalty, subject only to payment of any admitted liability, and the objection should be taken squarely at the stage of filing itself rather than by way of a belated prayer for waiver, since an Appellate Authority, being a creature of statute, has no inherent power to waive or relax an applicable pre-deposit on the ground of financial hardship, as reaffirmed in Gaurav Jain (supra) following Tecnimont Private Limited v. State of Punjab [(2021) 12 SCC 477]. 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. Until the Hon'ble Supreme Court finally settles the question, taxpayers would be well advised to place on record the interim order in PVCON Engineering (supra) along with the decisions noted above at the time of filing, so that the appeal is not mechanically rejected as defective for want of pre-deposit.

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