

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Ct.551 **03.11.25**
M/1.
Item No.8 Sws.M

WPA 19676 of 2025

Barjinder Singh Kohli

Vs

The Assistant Commissioner of Revenue & Ors.

Mr. Sandip Choraria
Mr. Akash Chakraborty
Mr. Rishav Manna

...for the petitioner

Mr. Tanoy Chakaborty
Mr. Saptak Sanyal

....for the State

1. The petitioner is aggrieved by an order dated May 15, 2025 passed by the Appellate Authority under Section 107 of the WBGST Act, 2017 read with Section 107 of CGST Act, 2017.
2. The Appellate Authority has dismissed the petitioner's appeal on the ground of delay and non-compliance with the condition of statutory pre-deposit.
3. The adjudication order passed under Section 74 of the said 2017 Act is dated January 7, 2025 and therefore an appeal preferred thereagainst would have been within time, if the same had been filed within April 7, 2025. The petitioner, however, lodged the appeal before the appellate authority on April 26, 2025, that is beyond the period of three monthsspecified in Section 107(1) of the 2017 Act but within the condonable period of one month in

terms of Section 107(4) of the said Act of 2017. The petitioner while preferring such appeal did not put in any pre-deposit since the order impugned before the appellate authority only determined interest and penalty payable by the petitioner. It is the petitioner's case that as the petitioner has already paid the taxes through DRC-03 on March 12, 2021, and the adjudication order shows "Nil" tax liability/demand no pre-deposit was required to be put in. It is submitted that the marginal delay occasioned in preferring the appeal should have been condoned.

4. The Appellate Authority has however refused to condone such delay and has rejected the appeal on the twin grounds as stated hereinabove, with the following observations:

"Whereas, the appellant was asked on 07.05.2025 to show cause positively by 14.05.2025, as to why the aforesaid appeal application will not be rejected owing to the aforementioned deficiency of late filing of the appeal application under sub-section (1) & (4) of section 107 of the aforesaid Acts and also the deficiency of non-payment of the pre-appeal deposits under sub-section (6) of section 107 of the aforesaid Acts; and

Whereas, the appellant has neither filed any reply to the aforesaid Show Cause Notice dated 07.05.2015 nor has he prayed for further time; and

Therefore, the instant appeal application is rejected for violation of the

provisions of sub-section (1), (4) & (6) of section 107 of the foresaid Acts.”

5. Section 107(6) of the said 2017 Act as on the date when the appeal had been preferred provided as follows:

“107(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-five crore rupees,] in relation to which the appeal has been filed:

[Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent of the penalty has been paid by the appellant]”

6. It is evident from the above that there was no requirement for making any pre-deposit in cases where the appeal was carried against an order pertaining only to penalty and there being no amount of tax in dispute.
7. It is well settled that right to prefer appeal is a substantive right. It is equally settled that when a statute provides for a right to prefer appeal, it can also limit or restrict such right by imposing appropriate conditions. Requirement of pre-deposit

for filing appeal under Section 107(6) of the 2017 Act is one such condition. The opening words of Section 107(6) of the 2017 Act “No appeal shall be filed.....” indicate that the condition of pre-deposit is attached to the filing of the appeal. It is a precondition for filing the appeal. A provision containing such condition would be in the nature of a substantive provision and not merely procedural. When there was no provision for making any pre-deposit in respect of an appeal against an order demanding penalty or interest the petitioner could not have been asked to put in any pre-deposit where the order impugned by him only involved demand of penalty and interest. Non-existent conditions affecting substantive rights of appeal cannot be imported into statute. The appellate authority has, therefore, fallen in error in rejecting the petitioner’s appeal on such ground.

8. It is noted that Section 107(6) of the 2017 Act was subsequently amended by the Finance Act, 2025 thereby inserting the following proviso mandating pre-deposit even in cases where penalty has been imposed.

“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 percent of the said penalty has been paid by the appellant”.

The above proviso has taken effect from October 01, 2025.

9. The aforesaid provision would, however, clearly not apply to the facts of the present case inasmuch as the same was not there in the statute book at the time when the appeal was preferred. In fact, it was not there even on the date the appellate order was passed.
10. Insofar as the second ground is concerned, the Appellate Authority has recorded that the appellant has not filed separate application for condonation of delay showing sufficient cause for delay. However, the petitioner demonstrates that such application was filed and a copy thereof is appearing at pages 60 to 62 of the writ petition.
11. Be that as it may, without going into the aforesaid controversy, the matter is remanded to the Appellate Authority under Section 107, with liberty to the petitioner to file an appropriate application for condonation of delay before the said authority. The said authority shall consider such application and if the appellate authority satisfied by the causes shown for the delay occasioned, the appellate authority shall condone the delay and hear the appeal on merits. It is clarified that this Court has not

expressed any opinion on the sufficiency of the causes shown for delay and the Appellate Authority shall be free to take a decision on the matter on the basis of the material before it.

12. It is clarified that if the appellate authority condones the delay upon being satisfied by the causes shown, the said authority shall proceed to hear the appeal on merits without insisting for pre-deposit, since the appeal had been filed on April 26, 2025 i.e. prior to the insertion of the proviso to Section 107(6) of the 2017 Act.
13. With the above observations, **WPA 19676 of 2025** stands **disposed of**.
14. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

(Om Narayan Rai , J.)