NEUTRAL CITATION
2026:GUJHC:3827-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 386 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

==========

Approved for Reporting	Yes	No
	Yes	

==========

M/S. AGRAWAL ENTERPRISES
Versus
STATE OF GUJARAT & ORS.

==========

Appearance:
MR AS ASTHAVADI(3698) for the Petitioner(s) No. 1
MS. TANUSHREE SHRIMAL, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1,2,3

==========

CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 16/01/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. **RULE** returnable forthwith. Learned AGP waives the notice of Rule.

2. The present writ petition has been filed for quashing and setting aside the order dated 30.09.2025 passed by the respondent No.2, rejecting the appeal of the petitioner on the ground of delay.

3. The brief facts of the case are that the petitioner is a

NEUTRAL CITATION
2026:GUJHC:3827-DB

partnership firm situated at the address mentioned in the cause-title and has GST No. GSTN24ABNFA2763L1Z6. The respondent No.3 issued a demand order against the petitioner under Section 74(5) of the Central Goods and Service Tax (CGST)/State Goods and Service Tax (SGST) Act, 2017 (hereinafter referred to as 'the Act' for short) dated 21.3.2024, calling upon the petitioner to pay tax of Rs.1,98,720/- along with interest and penalty making total demand of Rs.5,03,768/-.

4. It is the case of the petitioner that notice for personal hearing was available on portal, which is dated 26.08.2025, asking hearing on 02.09.2025. Further, as per the portal, other dates which are mentioned for personal hearing are 06.09.2025 and 10.09.2025, but the petitioner was never informed about such hearing by mail or post. Therefore, the petitioner could not remain present for hearing. Thereafter, by impugned order dated 30.9.2025, the appeal of the petitioner has been rejected by the respondent No.2 on the ground of delay.

5. Learned advocate Mr. A. S. Asthavadi for the petitioner has submitted that in his application, the petitioner came to know about the impugned demand order dated 21.3.2024, only on 30.3.2025, and as soon as the petitioner came to know about the order, it approached the department and the concerned office, which advised the petitioner to either make the payment or file appeal with condonation of delay. The said aspect is not considered by the respondent No.2 while

NEUTRAL CITATION
2026:GUJHC:3827-DB

rejecting the appeal.

6. It is submitted that the appellate authority - respondent No.2 has noted that the adjudication of order has been passed online on GST portal and is intimated to the petitioner on same day through e-mail and SMS, however, the respondent No.2 has not confirmed the said aspect either with the petitioner or with the officer who issued demand order.

7. It is further submitted that, by not condoning the delay by the appellate authority, the same would cause harsh financial loss to the petitioner, which is a small partnership firm. Therefore, it would be in the interest of Justice to condone the delay and consider the appeal of the petitioner on merits. It is further submitted that even the order passed by the appellate authority dated 30.09.2025 was made available to the petitioner by sending an SMS dated 17.10.2025, though the order mentioned outward number but no address of the petitioner.

8. It is thus submitted that it is settled law that the statutory appeal may not be rejected on the ground of delay and the same is required to be considered on merits without entering into the technicalities of delay when there is justifiable reason for delay. It is further submitted that in the present case, there is a justifiable reason for the petitioner for filing the appeal at belated stage which may be considered in the interest of justice by this Court.

9. Mr. Asthavadi, learned advocate for the petitioner has

NEUTRAL CITATION
2026:GUJHC:3827-DB

submitted that as far as this issue is concerned, petitioner was issued advisory dated 29.06.2023 through e-mail for payment of tax in view of Input Tax Credit (ITC) wrongly availed. The petitioner has received reminder of advisory dated 10.08.2023 on his e-mail address, and he replied to the said advisory on 12.08.2023 through e-mail on 12.08.2023, and which was also personally inwarded in the GST office on 17.08.2023.

10. It is submitted that the petitioner was issued DRC-01 A dated 04.01.2024, which was replied by petitioner on 18.01.2024, 15.02.2024, 23.02.2024 and 04.03.2024.

11. While opposing the aforesaid submission, learned AGP Ms. Tanushree Shrimal has submitted that appellate authority has precisely held that it does not have power to condone the delay beyond the limitation period of 120 days and hence as per settled legal precedent, the writ petition may be dismissed.

12. We have considered the rival submissions.

13. The petitioner filed the appeal under Section 107 of the Act challenging the Demand order dated 21.03.2024 belatedly after 284 days. The only reason assigned by the petitioner explaining the delay in his application at Annexure "D" at Page-116 is in Para-3.1, which reads as under:

> *"3.1 The appellant due to not having the much knowledge of the computer have appointed a part time accountant for writing of his company account. The accountant work is only is to maintain the books of*

NEUTRAL CITATION
2026:GUJHC:3827-DB

> *account of the company and to file the statutory GST return. Therefore, he had also not had the knowledge that Order of Determination Tax DRC-07 have been issued."*

14. At this stage, we may refer to the observations of the Apex Court in the case of ***Assistant Commissioner (CT) LTU, Kakinada and Ors. v. Glaxo Smith Kline Consumer Health Care Limited, (2020) 19 S.C.C 681***. The Apex Court while examining the issue analogs to the issue of Sales Tax and VAT, Andhra Pradesh Value Added Tax Act, 2005 and provisions of Section 31 of the Limitation Act, 1963, which provides power of Appellate Authority to condone the delay and power of High Court under Article 226 of the Constitution of India has held that the Appellate Authority has no power to condone the delay, if an appeal is preferred after the aggregate period. However, it is held that though the powers of High Court under Article 226 of the Constitution of India are wide, but certainly not wider than the plenary powers bestowed on the Apex Court under Article 142 of the Constitution. It is held as under :-

> *"16. Indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on this Court under Article 142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties. Even while exercising that power, this Court is required to bear in mind the legislative intent and not to render the statutory provision otiose. In a recent decision of a three Judge Bench of this Court in Oil and Natural Gas Corporation Limited vs. Gujarat Energy Transmission Corporation Limited & Ors., the statutory appeal filed before this Court was*

NEUTRAL CITATION
2026:GUJHC:3827-DB

> *barred by 71 days and the maximum time limit for condoning the delay in terms of Section 125 of the Electricity Act, 2003 was only 60 days. In other words, the appeal was presented beyond the condonable period of 60 days. As a result, this Court could not have condoned the delay of 71 days. Notably, while admitting the appeal, the Court had condoned the delay in filing the appeal. However, at the final hearing of the appeal, an objection regarding appeal being barred by limitation was allowed to be raised being a jurisdictional issue and while dealing with the said objection, the Court referred to the decisions in Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur & Ors., Commissioner of Customs and Central Excise vs. Hongo India Private Limited & Anr., Chhattisgarh State Electricity Board vs. Central Electricity Regulatory Commission & Ors. and Suryachakra Power Corporation Limited vs. Electricity Department represented by its Superintending Engineer, Port Blair & Ors. and concluded that Section 5 of the Limitation Act, 1963 cannot be invoked by the Court for maintaining an appeal beyond maximum prescribed period in Section 125 of the Electricity Act."*

15. Thus, the Apex Court in the case of **Glaxo Smith Kline Consumer Health Care Limited (supra)** has cautioned that the provision of Section 5 of the Limitation Act, 1963 cannot be invoked by the Court (High Court) for maintaining an appeal beyond the maximum period provided in Section 125 of the Electricity Act, 2023, it has held as under :-

> *"15..... In the subsequent decision in Mafatlal Industries Ltd. v. Union of India, this Court went to observe that an Act cannot bar and curtail remedy under Article 226 or 32 of the Constitution. The Court, however added a word of caution and expounded that the Constitutional Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise its jurisdiction consistent with the*

NEUTRAL CITATION
2026:GUJHC:3827-DB

> *provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution does not mean that it can disregard the substantive provisions of a statute and pas orders which can be settled only through a mechanism prescribed by the statute."*

16. The Apex Court has also referred to the array of decisions dealing with provision of Section 29 (2) of the Limitation Act, 1963 in case of Special Legislation. One of such which has been rendered in the said decision is in the case of Oil and Natural Gas Corporation Limited v. Gujarat Energy Transmission Corporation Limited and Others, (2017) 5 S.C.C. 42, wherein it is held thus :-

> *"15. From the aforesaid decisions, it is clear as crystal that the Constitution Bench in Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409, has ruled that there is no conflict of opinion in Antulay case [A.R.Antulay v. R.S. Nayak, (1988) 2 SCC 602] or in Union Carbide Corpn. case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] with the principle set down in Prem Chand Garg v. Excise Commr., AIR 1963 SC 996. Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corpn. case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584]. As the pronouncement in Chhattisgarh SEB v. Central Electricity Regulatory Commission, (2010) 5 SCC 23, lays down quite clearly that the policy behind the Act emphasising on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act*

NEUTRAL CITATION
2026:GUJHC:3827-DB

and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution."

17. The Apex Court has further held in the case of **Glaxo Smith Kline Consumer Health Care Limited (supra)** as under :-

"19. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corporation of India Ltd. (supra), which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) Pvt. Ltd. vs. Union of India & Ors.19 and also of the Karnataka High Court in Phoenix Plasts Company vs. Commissioner of Central Excise (AppealI), Bangalore 20. The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 1995 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition 19 AIR 2015 Guj 97 20 2013 (298) ELT 481 (Kar.) 33 on the ground that the same is without jurisdiction or passed in excess of jurisdiction by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also nonsuit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the

NEUTRAL CITATION
2026:GUJHC:3827-DB

> *writ petitioner choses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act,the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three Judge Bench of this Court in Oil and Natural Gas Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.*
>
> *xxx xxx xxx*
>
> *22. Suffice it to observe that this decision is on the facts of that case and cannot be cited as a precedent in support of an argument that the High Court is free to entertain the writ petition assailing the assessment order even if filed beyond the statutory period of maximum 60 days in filing appeal. The remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of Section 31 of the 2005 Act and is, therefore, not entertained, it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such."*

18. Thus, the Apex Court has held that even if the writ petition is filed after the expiry of maximum prescribed period of limitation, though alternative efficacious remedy is available, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course and doing so would be in teeth of principle of dictum underlying the dictum of three Judge's Bench of the Apex Court in the case of

NEUTRAL CITATION
2026:GUJHC:3827-DB

Gujarat Energy Transmission Corporation Limited (supra). The Apex Court has further held that, albeit, the High Court has wide powers, but the same does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the Andhra Pradesh Value Added Tax Act, 2005 and if the same is done, it would render the legislative scheme and intention behind the stated provision otiose. Thus, on the same principles as enunciated by the Apex Court, we are not inclined to set aside the order passed by the Appellate Authority and more particularly in wake of the lame excuse given by the petitioner for condoning the delay such as the illness of the Accountant and closure of business.

19. We may also refer to the observations of the Apex Court in the case M/s. Singh Enterprise vs. Commissioner of Central Excise, Jamshedpur & Ors., rendered in Appeal (Civil) No.5949 of 2007 decided on 14.12.2007 wherein the Apex Court has refused to accept the reason of belatedly filing of the appeal on the pretext of lack of experience and closure of business.

20. Section 107 (4) of the Act grants discretion to the Appellate Authority, to allow additional one month in case he/she is satisfied that the appellant was prevented by “sufficient cause” from presenting the appeal after 90 days, but within a period of 30 days. Thus, the discretion of the Appellate authority ends on the completion of additional 30 days. Such discretion does not extend to powers under Article

NEUTRAL CITATION
2026:GUJHC:3827-DB

226 of the Constitution on India as well. The statute, thus provides additional one month to file the appeal, and all the reasons satisfying the expression “sufficient cause” can be raised by the appellant. Similar expression is found in section 5 of the Limitation Act, 1963, and Section 29 of Limitation Act, 1963 which deals with “Savings”, which prevents the overriding the provisions of specific statutes that have their own distinct limitation periods. It permits such laws to govern their own timelines while still leveraging the mechanics of the Limitation Act. Thus, when an additional period of 30 days is supplied by the statute over and above the basic period of 90 days, and the same stands exhausted, this Court cannot exercise powers under Article 226 of the Constitution to dilute the intention of the legislature and further extend the limitation by condoning the delay by re-examining the “sufficient cause”. The reason assigned by the appellant is also not palatable, as it is hard to believe, that in todays, era, the appellant and his accountant are not having the knowledge of operating the computers, and hence they did not verify the order DRC-07. We clarify, that even if the appellant had a valid reason and sufficient cause explaining the delay, this Court cannot condone the delay beyond 120 days. The tax payers are supposed to remain vigilant of all the proceedings and have to timely verify the orders on the portal. The taxing statutes operate in very strict time frame, and any relaxation or easing of limitation period will have cascading effect on the functioning of the revenue.

21. So far as the challenge of Demand Order is concerned,

NEUTRAL CITATION
2026:GUJHC:3827-DB

having availed its alternative efficacious remedy of filing the appeal, this Court cannot call back and examine the Demand Order. Having availed the remedy of filing an appeal as the petitioner was aware that none of the issues either with regard to violation of the principles of natural justice or the lack of jurisdiction was involved and the issue was only confined with the facts and the appropriate remedy was to file an appeal as provided under the statute, this Court cannot examine the validity or legality of the Order-in-Original.

22. In view of the settled legal precedents, this Court cannot exercise its jurisdiction under Article 226 of the Constitution of India condoning the delay. Thus, the writ petition fails and the same is ***dismissed***.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI,J)

SAJ GEORGE/DB/6