

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO.9540 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.S. SUPEHIA***and***HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

Approved for Reporting	Yes	No
		✓

NEW KAILASH SUPPLIERS

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR. APURVA N MEHTA(7202) for the Petitioner(s) No. 1

MS POOJA ASHAR, AGP for the Respondent(s) No. 1,2,3

CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA*and***HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 29/01/2026****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)**

1. Heard learned advocate Mr.Apurva Mehta for the petitioner and learned Assistant Government Pleader Ms. Pooja Ashar for the respondents
2. **RULE** returnable forthwith. Learned Assistant Government Pleader Ms.Pooja Ashar waives service of notice of rule on behalf of the respondents. Since a short issue is involved in the present writ petition, the same is taken up for final hearing today itself.
3. By way of this petition, the petitioner has assailed the order dated 25.04.2025 passed by the respondent no. 3 rejecting the appeal filed by the petitioner in Form GST APL-01 under Rule 108 (1) of the Goods and Services Tax Rules, 2017 (For Short, "the Rules") and under the provision of Section 107 of the Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act") on the ground of delay.

4. Learned advocate Mr. Apurva Mehta appearing for the petitioner at the outset has submitted that the appellate authority has failed to examine the fact of rectification application filed by the petitioner dated 05.11.2024 was rejected on 19.03.2025 and hence the limitation period would start from 20.03.2025 and appeal has been filed on 25.03.2025 within a period of five days and hence the appellate authority has fallen in error in rejecting the appeal by the impugned order dated 25.04.2025 on the ground of delay. In support of his submissions, learned advocate Mr. Mehta has placed reliance on the decision of the Madras High Court in case of M/s. SPK and Co. vs. The State Tax Officer, W.P. (MD) No.27787 of 2024 dated 22.11.2024.

5. In response to the aforesaid submission, learned Assistant Government Pleader Ms. Pooja Ashar appearing for the respondents has submitted that the present writ petition may not be entertained as the petitioner unquestionably has not challenged the rectification order and since he has challenged the original order dated 12.08.2024 by filing the appeal beyond the period of 225 days, the appellate authority has precisely rejected the appeal.

6. The facts which are established from the pleadings are that against the order dated 12.08.2024 passed by the respondent, the petitioner filed rectification application on 05.11.2024 under the provision of Section 161 of the Act. The said application was required to be decided within the statutory limit of three months, however, it is not in dispute that the said rectification application has been decided on 19.03.2025. The petitioner thereafter filed an appeal under the provision of Section 107 of the Act before the appellate authority challenging the original order dated 12.08.2024 on 25.03.2025. In Form GST APL-01, the petitioner under the item nos. 16 and 17, in such form has explained the period of delay by pointing out that the rectification order was made on 05.11.2024 which was rejected on 19.03.2025 (incorrectly typed as 13.03.2025). So applicable

time limit for filing delay start from 20.03.2025 (incorrectly typed as 14.03.2024) and hence, the appeal is in time. Thus, the petitioner had explained the delay and has categorically made a positive statement that appeal was within the period of limitation by mentioning that his rectification application was filed on 05.11.2024 against the order dated 12.08.2024, and the same is decided on 19.03.2025. However, the appellate authority thereafter has rejected the appeal vide order dated 25.03.2025 on the ground of delay. It is mentioned that since the appeal is beyond the statutory limits of three months plus one month i.e. beyond the period of 120 days, the appeal having been time barred, is rejected as the appellate authority does not have power to condone the delay.

7. It is true that the appellate authority does have any power for condoning the delay if the appeal is filed beyond the statutory period of 120 days and this Court also in catena of decisions has also held that the High Court while exercising powers under Article 226 of the Constitution of India cannot condone the delay , if it is beyond the period of 120 days. However, in the present case, the limitation would start running from 20.03.2025 on the rejection of the rectification application filed by the petitioner since it is rejected on 19.03.2025. The petitioner within a period of one week i.e. on 25.03.2025 has filed an appeal challenging the order dated 12.08.2024. Thus, the appellate authority was required to examine the details filled in by the petitioner in Form GST APL-01 before rejecting the appeal on the ground of delay. The filing and disposal of the rectification application against the order dated 12.08.2024 was a vital aspect which would directly impact on the calculation of the limitation period provided under Section 107 of the Act.

8. Hence, the present petition **succeeds**. The impugned order in appeal dated 25.04.2025 passed by respondent No.3 is hereby quashed and set aside. The matter is remanded to the appellate authority i.e. respondent no.3 to decide the appeal of the petitioner afresh after giving

an opportunity of hearing by passing a reasoned order in accordance with law.

9. Rule is made absolute to the aforesaid extent with no order as to costs.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI, J)

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