Monte Carlo Limited vs. The Additional Commissioner of State Tax (Appeal),

Whether a writ petition is maintainable against a first appellate order rejecting appeal as time-barred under Section 107 of the GST Act, when the statutory forum of GST Appellate Tribunal (GSTAT) under Section 112 is now functional.

Date of Order: January 22, 2026
Case Law No: GIB-ORHC-2026-48
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

BACKGROUND

The petitioner, engaged in works contract and construction services, was subjected to audit proceedings which resulted in a Show-Cause Notice for alleged non-payment of tax for the period April 2018 to March 2019. An adjudication order was passed confirming a tax demand under Section 73 of the CGST/OGST Act, 2017. The petitioner filed an application under Section 161 of the GST Act for rectification of the said order, which was rejected. Being constrained by the lapse of the time limit under Section 107 to challenge the original adjudication order directly, the petitioner filed an appeal against the rectification rejection order. The First Appellate Authority rejected this appeal as time-barred vide order dated 17.09.2025. Recovery proceedings were subsequently initiated, followed by garnishee proceedings against a third party. The petitioner thereupon filed the present writ petition.

CRUCIAL FACTS

The adjudication order confirming demand was passed on 30.04.2024 under Section 73. The petitioner filed a rectification application on 06.05.2024 under Section 161 of the GST Act. This application was rejected on 17.01.2025. The petitioner then filed an appeal under Section 107 on 21.02.2025 against the rectification rejection order, which was admitted on 01.03.2025. However, the First Appellate Authority issued a show-cause notice as to why the appeal should not be rejected as time-barred, and after hearing, rejected the appeal vide order dated 17.09.2025 as beyond the period prescribed under Section 107. Recovery notice in Form GST DRC-13 dated 19.12.2025 and garnishee notice in Form GST DRC-09 dated 02.01.2026 were thereafter issued. The petitioner's

core argument before the High Court was that the period of limitation for the appeal should be reckoned from the date of the rejection of the rectification application (17.01.2025) and not from the date of the original adjudication order, and that the rectification order merges with the original order thereby keeping the appeal window open.

COURT OBSERVATIONS (Verbatim — Crucial)

On Maintainability of Writ when GSTAT is functional:

"*Having found that the contentions raised by the learned counsel for the petitioner can very well be taken as ground of appeal before the Goods and Services Appellate Tribunal under Section 112 of the GST Act, this Court without expressing any opinion on the merit of the matter wishes to relegate the Petitioner to avail the alternative remedy.*"

On the General Principle of Writ vs. Statutory Forum:

"*It is no longer res integra that the Writ Court can be approached assailing an order for which the forum of appeal is provided and the same is entertainable in the event the forum is not made functional or constituted as the person cannot be rendered remediless. Equally it is true that if conditions are attached to filing an appeal before such forum, the Writ Court shall ensure strict compliance thereof as a person cannot steal a march taking a shelter that there is no inhibition in the writ Court in entertaining the writ petition and passing an order taking departure from the said statutory provision.*"

On GSTAT being now functional:

"*Since the forum has already been provided in the statute, which is now made functional and the period for filing the appeal has been specified in the above Notification/Circular/Order, it would not be proper for the Writ Court to keep such writ petitions pending as the dispute raised by the petitioner in the instant writ petition can be adjudicated by the said forum.*"

On No Opinion on Merits:

"*This Court makes it clear that we have not expressed any opinion on the merits on the Orders impugned in the writ petition.*"

FINAL VERDICT

The writ petition is disposed of with a direction to the petitioner to file an appeal before the GST

Appellate Tribunal (GSTAT) under Section 112 of the GST Act, after depositing the pre-deposit amount as required under Section 112(8), within the timelines prescribed in the Government Notification S.O. No. 4220(E) dated 17.09.2025. No opinion expressed on merits. Recovery proceedings not stayed.

 FLAT *(Neither relief granted nor petition dismissed on merits — relegated to GSTAT)*

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