

Gaurav Jain & Anr. v. Joint Commissioner (Appeals-II), CGST Delhi Zone & Anr.

Substituted proviso to Section 107(6) (10% pre-deposit on penalty-only orders, w.e.f. 01.10.2025) does not apply to appeals arising from an SCN issued before 01.10.2025.

Date of Order: July 31, 2026
Case Law No: GIB-DHC-2026-130
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CASE DESCRIPTION / SUMMARY

Background

An SCN dated 25.06.2025 under Section 122(1A) proposed penalties on the petitioners as alleged key persons behind fictitious entities passing on ITC. The Order-in-Original dated 16.12.2025 imposed penalties aggregating Rs.346,55,18,856/- on each petitioner with no tax demand, so the substituted proviso would require about Rs.34.66 crore each as pre-deposit. The Appellate Authority (09.03.2026) declined waiver for want of power. The petitioners contended that the right of appeal vests on commencement of the lis (the SCN date), when no percentage-based pre-deposit existed for such orders (the earlier proviso covered only Section 129(3) orders at 25%). The Department argued that the right arose only on the adjudication order and that the words "no appeal shall be filed" make the filing date decisive.

Final Verdict

Relying on Hoosein Kasam Dada, Garikapati Veeraya and Videocon International, the Court held that the right of appeal is substantive, attaches to the lis at its commencement, and cannot be subjected to a more onerous condition except by express enactment or necessary intendment; here the lis commenced no later than 25.06.2025 and the substituted proviso diminishes the appellate package. Section 129 of the Finance Act, 2025 contains no such intention or transitional clause, the prohibitory words only fix the stage of compliance, and Hardeodas Jagannath, Surinder Singh Deswal and Chandra Sekhar Jha were distinguished. The Court agreed that the Appellate Authority has no power to waive an applicable pre-deposit, but that question did not arise.

Held: the substituted proviso does not govern appeals arising from proceedings initiated by the SCN dated 25.06.2025; the appellate remedy is governed by Section 107(6) as it stood on that date, and no 10% penalty pre-deposit is required (subject to Section 107(6)(a) for

admitted amounts). The period from 20.03.2026 to the judgment was excluded for limitation, appeals were to be filed within four weeks with no coercive steps meanwhile, and the constitutional challenge was left open. The writ petition was allowed.

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