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IMPORTANT GST CASE LAW

JUDGEMENT

10% Pre-Deposit on Penalty-Only Orders Not Applicable Where Proceedings Began Before Amendment

In Case Of	Issued By	Order Date
Gaurav Jain	High Court of Delhi	31st July 2026

Order No
Writ Petition (C) No. 8414/2026

OBSERVATIONS

- The Petitioners were issued a Show Cause Notice dated 25.06.2025 proposing penalties under Section 122(1A) of the CGST Act for **alleged wrongful availment and passing on of Input Tax Credit through non-existent/fictitious entities.**

- An Order-in-Original dated 16.12.2025 subsequently **imposed penalties aggregating to ₹346.55 crore on each Petitioner, without raising any corresponding tax demand against them in their individual capacities.**

- Meanwhile, with effect from 01.10.2025, the proviso to Section 107(6) was substituted to provide that an **appeal against an order demanding penalty without involving any tax demand cannot be filed unless 10% of the penalty is deposited.**

- Accordingly, application of the amended provision would have required each Petitioner to deposit approximately ₹34.66 crore for filing the appeal. The Petitioners approached the Delhi High Court contending that **since the adjudicatory proceedings had commenced with the SCN dated 25.06.2025, their appellate rights were governed by the law prevailing before the amendment.**

JUDGEMENT

- The Delhi High Court held that the **right of appeal is a substantive right which vests when the *lis* or adjudicatory proceedings commence, even though such right becomes exercisable only after an adverse order is passed.**

- In the present case, the *lis* commenced with issuance of the SCN dated 25.06.2025, when the Department asserted and quantified the Petitioners' personal penal liability. **On that date, Section 107(6) did not prescribe any percentage-based pre-deposit for an appeal** against a wholly disputed penalty-only order under Section 122(1A).

- The substituted proviso introduced a new and more onerous condition requiring deposit of 10% of the penalty. **In the absence of any express provision or necessary implication giving the amendment retrospective operation, such condition could not impair the appellate right already vested in the Petitioners.**

- Accordingly, the Court **held that the Petitioners' appeals would be governed by Section 107(6) as it stood on 25.06.2025, and they were not required to deposit 10% of the disputed penalties for filing their appeals.**

TAKEAWAYS

- The judgment reinforces an important principle concerning amendments to statutory appellate remedies: **the relevant date is the commencement of the *lis*, and not necessarily the date of the adjudication order or filing of the appeal.**

- Where adjudicatory proceedings were initiated before 01.10.2025, the subsequently introduced 10% pre-deposit requirement for penalty-only orders may not apply merely because the Order-in-Original or appeal falls after the amendment.

- **The ruling is particularly significant for proceedings under Section 122(1A) involving substantial penalty demands without a corresponding tax demand, since the amended proviso can otherwise create a significant financial threshold for accessing the appellate remedy.**

- However, the Court also affirmed that **where a statutory pre-deposit requirement is otherwise applicable, the Appellate Authority has no inherent power to waive or reduce it on grounds of financial hardship**. The decision therefore draws a clear distinction between waiver of an applicable pre-deposit and determining whether the amended pre-deposit provision applies to the proceedings in the first place.

- Importantly, the **Court did not decide the constitutional validity of the amended proviso to Section 107(6), leaving that issue open for consideration in an appropriate case.**

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