

EY Tax Alert

Delhi HC holds 10% pre-deposit requirement for penalty-only appeals inapplicable where SCN was issued before amendment

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Executive summary

This Tax Alert summarizes a recent ruling of the Delhi High Court (HC)¹ on whether the newly introduced pre-deposit requirement for filing an appeal against penalty-only order applies where the show cause notice (SCN) was issued before 1 October 2025, while the adjudication order was passed thereafter.

The key observations of the HC are:

- The right of appeal is a substantive right which once vested, cannot be taken away, impaired or subjected to a more onerous condition unless the legislature manifests such an intention expressly or by necessary intendment.
- This right arises when the *lis* (legal dispute) begins and is governed by the provisions that exist on that date.
- In tax adjudication, the dispute begins when Department issues show cause notice (SCN) asserting liability and requiring the taxpayer to respond, and not when the adjudication order is passed or the appeal is filed.
- On the date of the SCN in the present case, the Central Goods and Services Tax Act, 2017 did not provide for any pre-deposit for filing an appeal against penalty-only order under Section 122(1A).
- Since the amended proviso introduced a new and more onerous pre-deposit condition, it could not apply to proceedings already initiated before 1 October 2025 in the absence of express language or necessary implication to that effect.

Basis above, HC held that the pre-deposit requirement for filing appeals against penalty-only orders would not apply to cases where SCN was issued prior to 1 October 2025 and directed the appellate authority to entertain the appeals without insisting on payment of the same.

¹ TS-554-HC(DEL)-2026-GST

Background

- Prior to 1 October 2025, the proviso to Section 107(6) of the Central Goods and Services Tax Act, 2017 (CGST Act) required a pre-deposit of 25% of the disputed penalty only for appeals against orders passed under Section 129(3), which deals with penalty orders arising from detention or seizure of goods and conveyances in transit.

It did not provide for any pre-deposit for appeals against other disputed penalty-only orders.

- With effect from 1 October 2025, the proviso to Section 107(6) was substituted to mandate a pre-deposit of 10% of the penalty for filing an appeal against any order demanding penalty without involving any tax demand, thereby extending the pre-deposit requirement to penalty-only orders beyond the earlier Section 129(3).
- The petitioners were issued a Show Cause Notice (SCN) dated 25 June 2025 proposing penalties under Section 122(1A) of the CGST Act. The said provision deals with penalties on persons who cause to commit, retain the benefit of, or are otherwise involved in specified offences *inter alia* relating to wrongful availment or passing on of the input tax credit (ITC).
- The adjudication culminated in an Order-in-Original dated 16 December 2025 imposing penalties on the petitioners.
- The petitioners intending to contest the Order-in-Original, sought waiver or relaxation of the pre-deposit requirement from the Appellate Authority, who rejected the request on the ground that it neither possessed any statutory mandate, nor any discretionary power to relax, reduce or waive the prescribed pre-deposit.
- Aggrieved, the petitioners approached Delhi High Court (HC), initially seeking waiver or reduction of the pre-deposit and challenging the constitutional validity of the amended proviso to Section 107(6).
- However, at the time of preliminary hearing, the petitioners contested on the ground that the amended proviso was not applicable to their case since the SCN initiating proceedings had been issued prior to the effective date of amendment.

Petitioner's Contentions

- The right of appeal is a vested substantive right which accrues on the commencement of the *lis* and includes the conditions governing its exercise as existing on that date.
- In the present case, the *lis* commenced upon issuance of the SCN dated 25 June 2025, when the Revenue asserted personal penal liability against the petitioners.
- On the date of issuance of the SCN, no percentage based pre-deposit was prescribed for appeals against penalty-only orders under Section 122(1A) of the CGST Act.

- The amended proviso materially burdens the appellate remedy by introducing a new mandatory pre-deposit and therefore cannot be applied to proceedings already initiated.
- Reliance can be placed upon the Supreme Court (SC) rulings² to contend that a vested appellate right cannot be impaired by a subsequent amendment unless the statute expressly provides so.
- A formal adjudicatory proceeding under the CGST Act commences upon issuance of SCN and, thus, the substituted proviso is inapplicable in the current case.³
- The amended proviso is constitutionally vulnerable insofar as it prescribes an uncapped and inflexible pre-deposit in penalty-only cases, even though the deposit in respect of disputed tax is subject to a statutory ceiling.
- The HC may waive or reduce the pre-deposit under Article 226 of the Constitution of India, to preserve the petitioners' statutory remedy of Appeal.

Revenue's Contentions

- The petitioners had no enforceable right of appeal until the adjudication order was passed on 16 December 2025. Therefore, the law prevailing on the date when appeal became available should be complied with.
- The opening words of Section 107(6) - "*No appeal shall be filed*" make the date of filing of the Appeal determinative and the phrase indicates that all appeals filed after 1 October 2025 must satisfy the substituted proviso.
- Also, the earlier proviso itself was substituted and there was no saving provision preserving the pre-amended regime for cases where only an SCN had been issued prior to the amendment. Thus, the substituted proviso alone governs appeals filed after 1 October 2025.
- Apart from the issuance of the SCN, all subsequent steps in the adjudicatory process occurred after the substituted proviso had come into force.
- No vested appellate right could have arisen merely upon issuance of the SCN, especially when no appeal had been filed.
- The pre-deposit mechanism serves the purpose of discouraging frivolous appeals and is accompanied by a statutory stay of recovery under Section 107(7).
- Where a statutory pre-deposit condition applies, the Appellate Authority cannot invoke inherent or implied powers to waive or reduce it on the ground of financial hardship.⁴

HC Ruling

- The right of appeal is a substantive right and not merely procedural. Once the right is vested, it cannot

² AIR 1967 SC 1823 and (1957) 1 SCC 180

³ 2025 INSC 982 or 2025 SCC OnLine SC 1700

⁴ (2021) 12 SCC 477, 2025:DHC:2651-DB

be taken away, impaired or subjected to a more onerous condition unless the legislature manifests such an intention expressly or by necessary intendment.

- It vests upon commencement of the *lis* and the issuance of an adverse order merely makes the right capable of exercising. It carries with it the appellate regime and conditions governing its exercise as existing on the date of its vesting.
- A newly introduced pre-deposit condition imposes a financial burden on the exercise of an appeal. It is not merely procedural but constitutes a substantive condition affecting the appellate right since non-compliance may altogether prevent institution of an appeal.
- The appellate remedy is conferred as a particular “package”. The package comprises not merely the existence of an appeal, but also the forum, scope and limitations subject to which it may be pursued. The package available at the commencement of the *lis* constitutes the vested substantive right of the litigant.⁵
- The fact that replies, hearings and adjudication took place after 1 October 2025 did not postpone commencement of proceedings. These were subsequent steps in an already initiated adjudicatory process.
- On the date of commencement of proceedings, the appellate regime did not contain any requirement to deposit a percentage of disputed penalty for filing an appeal against a penalty-only order under Section 122(1A).
- The substituted proviso introduced a mandatory deposit of 10% of the disputed penalty and, therefore, imposed a more onerous condition affecting vested appellate rights.
- Neither the Finance Act, 2025, nor the substituted proviso expressly provided that the amendment would apply to pending adjudicatory proceedings. Nor could such intention be inferred by necessary implication.
- Accordingly, appeals arising from proceedings initiated by the SCN dated 25 June 2025 would continue to be governed by the pre-amendment version of Section 107(6).
- Since the substituted proviso itself was inapplicable in

the current case, the issue of constitutional validity of the proviso was left open for consideration in an appropriate case.

Comments

- a. Recently, Hyderabad GSTAT [2026-VIL-45-GSTAT-HYD] held that the pre-deposit requirement under the proviso to Section 112(8), introduced from 1 October 2025 for appeals before the GSTAT against penalty-only orders, does not apply where the SCN, Order-in-Original and Order-in-Appeal were all issued before that date.
- b. With effect from 1 October 2025, the pre-deposit percentage and monetary limits for appeals involving disputed tax were also amended. The impact of this ruling may also need to be examined in such cases where proceedings were initiated before the amendment, but the order was passed or appeal was filed after that date.
- c. This ruling may have wider relevance beyond the specific issue of pre-deposit. It reinforces the principle that where a substantive right has already vested before an amendment, any subsequent amendment introducing new conditions or procedural requirements may not ordinarily apply to subsequent steps in that proceeding.

⁵ (2015) 4 SCC 33

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