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* IN THE HIGH COURT OF DELHI AT NEW DELHI
% ***Judgment reserved on: 20.07.2026***
Judgment pronounced on: 31.07.2026
Judgment uploaded on: 31.07.2026

\+ W.P.(C) 8414/2026, CM APPL. 39420/2026, CM APPL. 39421/2026, CM APPL. 43404/2026, CM APPL. 43716/2026

GAURAV JAIN & ANR. .....Petitioners
Through: Mr. Ramchandra Madan, Mr. Vivek Anand Singh, Mr. Tushar Nigam and Mr. Himanshu Yadav, Advs.

versus

JOINT COMMISSIONER (APPEALS-II) CGST DELHI ZONE & ANR. .....Respondents
Through: Ms. Samiksha Godiyal, SSC-CBIC with Mr. Tenzing Namgyal Bhutia and Mr. Ritiwik Narayanan, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

J U D G M E N T

ANIL KSHETARPAL, J.:

1. The present Writ Petition, filed under Article 226 of the Constitution of India, raises a narrow question concerning the temporal operation of the proviso to sub-section (6) of Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"), as substituted with effect from 01.10.2025. The question is whether the requirement of depositing ten per cent of the penalty for filing an Appeal against a penalty-only order applies where the adjudicatory proceedings were initiated before the substituted

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proviso came into force, though the Order-in-Original was passed thereafter.

2. The Petitioners were issued a Show Cause Notice dated 25.06.2025 (hereinafter referred to as the "SCN"), proposing the imposition of penalties under Section 122(1A) of the CGST Act. The adjudicatory proceedings culminated in the Order-in-Original dated 16.12.2025 (hereinafter referred to as the "Impugned Order"), whereby penalties aggregating to ₹346,55,18,856/- were imposed upon each Petitioner, without any accompanying demand of tax against them in their individual capacities.

3. An Appeal against the Impugned Order lies before the Appellate Authority under Section 107 of the CGST Act. By virtue of the proviso to Section 107(6), as substituted with effect from 01.10.2025, an Appeal against an order demanding penalty without involving any demand of tax cannot be filed unless the Appellant deposits a sum equal to ten per cent of the penalty. If the substituted proviso governs the Petitioners' Appeals, each Petitioner would be required to deposit approximately ₹34.66 crore before filing an Appeal.

4. On the date of issuance of the SCN, Section 107(6) of the Act did not prescribe any percentage-based pre-deposit for an Appeal against a wholly disputed penalty-only order under Section 122(1A) of the CGST Act. The proviso then in force was confined to appeals against orders passed under Section 129(3). The substituted proviso has, therefore, introduced a percentage-based pre-deposit in respect of

the penalty-only order with which this Court is concerned.

5. The present Petition was initially framed as one seeking waiver or reduction of the pre-deposit and, in the alternative, questioning the constitutional validity of the substituted proviso. However, when the matter was taken up at the preliminary hearing, learned counsel for the Petitioners contended that the substituted proviso would not apply to the Petitioners' case since the SCN had been issued on 25.06.2025, prior to its coming into force. Notice was issued on the said question and learned counsel for the Respondents sought time to examine the issue and assist the Court.

FACTUAL MATRIX

6. Since the controversy before this Court is confined to the condition governing the Petitioners' statutory appeals, it is unnecessary to examine the underlying allegations in detail. It would suffice to notice that the SCN alleged that the Petitioners were key persons and main beneficiaries of a network of non-existent or fictitious entities through which Input Tax Credit had allegedly been wrongfully availed and passed on.

7. The SCN issued to the Petitioners invoked Section 122(1A) of the CGST Act against each Petitioner and called upon them to show cause as to why penalties of ₹137,16,19,588/- for the alleged passing on of Input Tax Credit and ₹209,38,99,268/- for the alleged availment of Input Tax Credit should not be imposed upon them. The proposed personal liability of each Petitioner was, therefore, identified, quantified and placed for adjudication before the Competent

Authority.

8. The Petitioners submitted their written replies and were represented at the personal hearing before the Adjudicating Authority. Upon conclusion of the proceedings, the Impugned Order dated 16.12.2025 imposed upon each Petitioner the two penalties proposed in the SCN, aggregating to ₹346,55,18,856/-, under Section 122(1A) of the CGST Act, read with the corresponding State enactments and Section 20 of the Integrated Goods and Services Tax Act, 2017. No tax demand has been raised against the Petitioners in their individual capacities.

9. Desirous of assailing the Impugned Order under Section 107 of the CGST Act, the Petitioners addressed an E-mail dated 06.03.2026 to the Appellate Authority seeking waiver or relaxation of the pre-deposit on the ground of financial hardship. By communication dated 09.03.2026, the Appellate Authority declined the request, stating that it possessed neither any statutory mandate nor any inherent discretionary power to relax, reduce or waive the prescribed pre-deposit. The present Writ Petition was thereafter instituted on 20.03.2026.

STATUTORY SCHEME

10. Section 107 of the CGST Act provides the remedy of an Appeal against a decision or order passed by an Adjudicating Authority. In terms of sub-section (1), any person aggrieved by such decision or order may prefer an Appeal before the prescribed Appellate Authority within three months from the date on which the decision or order is

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communicated. In terms of Sub-section (4) of Section 107 of the Act, the Appellate Authority may, upon sufficient cause being shown, permit presentation of the Appeal within a further period of one month.

11. Before 01.10.2025, sub-section (6) of Section 107 of the CGST Act, insofar as relevant, provided as follows:

> *"(6) No appeal shall be filed under sub-section (1), unless the appellant has paid —*
>
> > *(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and*
> >
> > *(b) a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty crore rupees, in relation to which the appeal has been filed:*
>
> ***Provided that no appeal shall be filed against an order under sub-section (3) of Section 129, unless a sum equal to twenty-five per cent of the penalty has been paid by the appellant.****"*
>
> *(Emphasis supplied)*

12. Under the provision as it then stood, an Appellant was required to pay the amount of tax, interest, fine, fee and penalty admitted by him and ten per cent of the remaining tax in dispute. In the case of an order under Section 129(3), twenty-five per cent of the penalty was required to be deposited. The provision, however, did not prescribe any percentage-based pre-deposit for an Appeal against a wholly disputed penalty-only order under Section 122(1A) of the CGST Act.

13. By Section 129 of the Finance Act, 2025, the proviso to Section 107(6) of the CGST Act was substituted. The substituted proviso, which was brought into force with effect from 01.10.2025, reads as

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follows:

> *"Provided that in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equal to ten per cent of the said penalty has been paid by the appellant."*

14. The substitution has different consequences for different categories of penalty orders. Insofar as an order under Section 129(3) is concerned, the percentage of penalty required to be deposited stands reduced from twenty-five per cent to ten per cent. For other penalty-only orders, including an order imposing a wholly disputed penalty under Section 122(1A), the substituted proviso introduces a percentage-based pre-deposit for the first time.

15. Thus, although the amendment may be beneficial in its application to an order under Section 129(3), it is more onerous for a person seeking to challenge a penalty-only order of the nature involved in the present case. In the Petitioners' case, the statutory position has changed from the absence of any percentage-based deposit to a mandatory deposit of ten per cent of the penalty imposed upon each of them.

16. The language employed by the legislature is also material. Section 107(6) does not postpone compliance with the pre-deposit requirement until the stage of hearing or final disposal of an Appeal, it expressly declares that no Appeal shall be filed unless the prescribed payment has been made. Upon compliance with sub-section (6), recovery of the balance amount is deemed to remain stayed under sub-section (7). The pre-deposit is, therefore, attached to the institution of the Appeal itself and constitutes one of the statutory conditions upon which the appellate remedy may be exercised.

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SUBMISSIONS ON BEHALF OF THE PETITIONERS

17. Learned counsel for the Petitioners submits that the right of appeal is a substantive right which vests upon commencement of the *lis* and carries with it the conditions governing its exercise on that date. It is contended that the *lis* in the present case commenced with the issuance of the Show Cause Notice dated 25.06.2025, whereby the Department asserted personal penal liability against the Petitioners and called upon them to answer the allegations.

18. It is submitted that, on the date of issuance of the SCN, Section 107(6) did not require any percentage-based pre-deposit for an appeal against a wholly disputed penalty-only order under Section 122(1A). The subsequent substitution, which imposes a deposit of ten per cent of the penalty, materially burdens the appellate remedy and cannot govern proceedings already initiated before it came into force.

19. In support of the aforesaid submission, learned counsel places reliance principally upon the decisions of the Supreme Court in ***Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh and Ors.***[1], and ***Garikapati Veeraya v. N. Subbiah Choudhry and Ors.***[2]. Reliance is also placed upon ***Armour Security (India) Ltd. v. Commissioner, CGST Delhi East and Anr.***[3] to contend that formal adjudicatory proceedings under the CGST Act commence upon issuance of the Show Cause Notice. The Petitioners accordingly contend that the substituted proviso is inapplicable to the appeals

[1] 1953 SCC OnLine SC 33
[2] (1957) 1 SCC 180
[3] 2025 SCC OnLine SC 1700

arising from the Impugned Order.

20. In the alternative, learned counsel submits that the substituted proviso is constitutionally vulnerable insofar as it prescribes an uncapped and inflexible pre-deposit in penalty-only cases, although the deposit in respect of disputed tax is subject to a statutory ceiling of ₹20 Crore. It is urged that, having regard to the magnitude of the penalties imposed and the financial condition of the Petitioners, insistence upon deposit of approximately ₹34.66 crore by each Petitioner would render the appellate remedy inaccessible.

21. As a further alternative, learned counsel submits that this Court may, in exercise of jurisdiction under Article 226 of the Constitution of India, waive or suitably reduce the pre-deposit so as to preserve the Petitioners' statutory remedy of Appeal.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

22. Ms. Samiksha Godiyal, learned Senior Standing Counsel appearing for the Respondents opposes the Writ Petition and submits that the Petitioners had no enforceable right of Appeal until the Impugned Order was passed on 16.12.2025. Since the Appeal became available only after the substituted proviso had already come into force, it must comply with the law prevailing on the date of filing.

23. It is contended that the opening words of Section 107(6) - *"No appeal shall be filed"* make the date of filing of the Appeal determinative. According to the Respondents, the substituted proviso regulates the institution of appeals filed after 01.10.2025 and its

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application to such appeals does not amount to giving the provision retrospective operation merely because the Show Cause Notice or the transactions under adjudication preceded the amendment.

24. Learned Senior Standing Counsel further submits that the earlier proviso stood repealed and replaced upon substitution. In the absence of any saving provision preserving the earlier regime for proceedings in which only a Show Cause Notice had been issued, the substituted proviso alone governs appeals filed after 01.10.2025.

25. Emphasis is also placed upon the fact that, except for the issuance of the SCN, all subsequent steps in the adjudicatory process occurred after the substituted proviso had come into force. The Petitioners submitted their replies and participated in the personal hearing in November 2025, while the Impugned Order was passed in December 2025. It is submitted that no vested appellate right could have arisen merely upon issuance of the SCN, particularly when no appeal has yet been filed.

26. Learned Counsel for the Respondents further points out that the Petitioners initially communicated with the Appellate Authority seeking waiver or reduction of the pre-deposit on the ground of financial hardship and did not contend before the Authority that the substituted proviso was inapplicable to them.

27. It is also submitted that the pre-deposit under Section 107(6) is accompanied by an automatic stay of recovery under Section 107(7) and serves the object of discouraging frivolous appeals. According to the Respondents, acceptance of the Petitioners' contention would

result in persons proceeded against under Section 122(1A) during the period preceding 01.10.2025 not being required to make a pre-deposit which other appellants under the CGST Act are required to make.

28. In support of the aforesaid submissions, learned Senior Standing Counsel places reliance upon the decisions in ***Hardeodas Jagannath v. State of Assam and Ors.***[4], ***Surinder Singh Deswal and Ors. v. Virender Gandhi***[5], ***Chandra Sekhar Jha v. Union of India and Anr.***[6] and ***Barjinder Singh Kohli v. Assistant Commissioner of Revenue and Ors.***[7] on the temporal application of amended conditions governing an Appeal. Reliance is also placed upon ***Tecnimont Private Limited v. State of Punjab and Ors.***[8] and the decision of a Coordinate Bench of this Court in ***M/s. Impressive Data Services Private Limited v. Commissioner (Appeals-I), Central Tax, GST Delhi***[9] on the validity of statutory pre-deposit conditions and the absence of any inherent power in the Appellate Authority to waive such conditions.

ISSUE FOR DETERMINATION

29. Upon consideration of the rival submissions, the principal issue which arises for determination is whether the proviso to Section 107(6) of the CGST Act, as substituted with effect from 01.10.2025, applies to an Appeal arising from adjudicatory proceedings initiated by a Show Cause Notice issued prior to the substitution, although the Order-in-Original was passed thereafter.

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[4] [1969] 2 SCR 261
[5] (2019) 11 SCC 341
[6] (2022) 14 SCC 152
[7] W.P.A 19676 of 2025, Cal HC
[8] (2021) 12 SCC 477
[9] 2025:DHC:2651-DB

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30. The questions concerning waiver and constitutional validity arise only if the substituted proviso is first held applicable to the Petitioners. The Court must, therefore, determine the point at which the appellate right, together with the conditions governing its exercise, vested and whether the amendment manifests an intention to apply the new condition to proceedings already initiated.

ANALYSIS AND FINDINGS

A. NATURE AND VESTING OF THE APPELLATE RIGHT

31. The right of Appeal is a creature of statute, and the legislature which creates the right may define its scope, prescribe the forum and impose conditions upon its exercise. Equally, however, it is firmly established that the right of Appeal is substantive and not merely procedural. Once vested, it cannot be taken away, impaired or subjected to a more onerous condition unless the legislature has manifested such an intention expressly or by necessary intendment. Although an Appeal can ordinarily be filed only after an adverse decision is rendered, the right to pursue the proceedings through the appellate hierarchy attaches to the *lis* at its commencement, the adverse order merely makes that right capable of exercise.

32. The principle was authoritatively applied in ***Hoosein Kasam Dada*** *(supra)*. In that case, the assessment proceedings had commenced under a provision which required an Appellant to deposit only such amount as was admitted to be due. During the pendency of those proceedings, the provision was amended to require payment of the entire assessed tax as a condition for admission of the Appeal. The

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assessment order and the Appeal were both subsequent to the amendment.

33. The Supreme Court held that the amended condition placed a substantial restriction upon the right of Appeal and could not govern an Appeal arising from proceedings which had commenced before the amendment. A condition requiring deposit of the disputed amount was not merely procedural, since it could prevent the exercise of the Appeal altogether and thereby fetter, impair or imperil the substantive right. The Court accordingly recognised that the appellate right vests when the original proceedings are initiated and cannot thereafter be burdened by a more onerous condition except by express enactment or necessary intendment.

34. Of particular relevance is the rejection of the contention that the prohibitory words of the amended provision under which the authority could not admit an Appeal without proof of deposit necessarily made the amendment applicable to every appeal filed thereafter. The Supreme Court held that the pre-existing Appellate right carried with it an implied preservation of the earlier law for the limited purpose of supporting and enforcing that right. The newly introduced proviso was consequently held to be wholly inapplicable to the pre-existing appellate right.

35. On the question as to when the *lis* arose, the Supreme Court explained that a *lis* comes into existence when a proposition asserted by one party is met with opposition from the other. In the context of tax adjudication, the Court held that the critical date is the date of

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initiation of the proceedings and not the date of the eventual decision. It accordingly directed the Appeal to be entertained under the pre-amendment provision, without requiring deposit of the disputed tax.

36. The principles in ***Hoosein Kasam Dada*** *(supra)* were subsequently crystallised by the Constitution Bench in ***Garikapati Veeraya*** *(supra)*. The Court held that the legal pursuit of a remedy through suit, appeal and further appeal constitutes one connected proceeding, that the right of appeal vests when the lis commences and also that such right can be taken away only by express enactment or necessary intendment.

37. The principle was further considered and elaborated by the Supreme Court in ***Videocon International Ltd. v. Securities and Exchange Board of India***[10]. The Supreme Court explained that an 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.

38. The Supreme Court drew a distinction between an amendment which enlarges an appellate package and one which diminishes it. Where the later enactment reduces the scope of the appellate remedy or makes it less advantageous, it adversely affects the vested right. In the absence of an express or necessarily implied provision to the contrary, the appellate package available at the commencement of the

[10] (2015) 4 SCC 33

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proceedings continues until their culmination.

39. Significantly, ***Videocon International*** *(supra)* holds that neither the date on which the adverse order is passed nor the date on which the Appeal is filed determines the appellate regime. The relevant date is the date on which the dispute or *lis* was initiated. The subsequent stages are treated as parts of one legal proceeding connected by an intrinsic unity.

40. The Court also rejected the contention that the absence of a specific saving clause necessarily subjects pending proceedings to the amended provision. It held that a non-retrospective amendment does not disturb rights crystallised in pending proceedings unless the statute expressly or by necessary intendment provides otherwise. Such proceedings continue, for that limited purpose, as though the unamended provision remained in force.

B. COMMENCEMENT OF THE *LIS* IN THE PRESENT CASE

41. The Respondents contend that no appellate right could have vested before the Impugned Order was passed because, until then, there was neither an appealable order nor a person aggrieved by such order within the meaning of Section 107(1). This submission conflates the stage at which the appellate right may be exercised with the point at which the appellate regime becomes attached to the proceedings.

42. The Petitioners could not have filed appeals before the Impugned Order came to be passed. The exercise of the right necessarily awaited an adverse adjudication. The decisions noticed

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above, however, expressly recognise that the right to carry the proceedings in appeal exists as a component of the legal proceeding before the original authority renders its decision. Were it otherwise, the law prevailing on the date of the appellate order or the filing of the appeal would invariably govern, a proposition expressly rejected in ***Hoosein Kasam Dada*** *(supra)* and ***Videocon International*** *(supra)*.

43. The relevant event is not the date of the alleged transactions, nor does every investigation by itself give rise to a vested appellate right. The material event here is the SCN dated 25.06.2025.

44. The SCN invoked Section 122(1A), identified the Petitioners as key persons and main beneficiaries, and proposed two quantified penalties aggregating to ₹346,55,18,856/- against each of them. The Department had thereby formulated and asserted a definite proposition of personal penal liability and placed it for statutory adjudication.

45. The fact that the Petitioners submitted their replies and participated in the personal hearing after 01.10.2025 does not postpone the commencement of the proceedings. The relevant inquiry is when the Department asserted the liability and required the Petitioners to answer it, not when they formally articulated their defence. The replies and hearing were subsequent steps in an adjudicatory process already initiated. The Impugned Order thereafter imposed the very penalties proposed in the SCN. There is thus an unbroken continuity between the SCN, the adjudication and the appellate remedy arising from the resulting order. The *lis* commenced no later than 25.06.2025.

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46. On that date, the appellate package did not include any percentage-based pre-deposit for challenging a wholly disputed penalty-only order under Section 122(1A). The substituted proviso introduced a mandatory deposit of ten per cent and prohibited filing of the Appeal unless it was first fulfilled. In relation to the Petitioners, this was a substantial financial impediment at the threshold of the appellate forum, where no corresponding percentage-based condition had previously existed.

47. The substituted proviso therefore diminishes the appellate package which attached to the proceedings on 25.06.2025. The remaining question is whether the Finance Act, 2025 nevertheless manifests an intention to apply the new condition to pending adjudicatory proceedings.

C. WHETHER THE AMENDMENT DISCLOSES A CONTRARY LEGISLATIVE INTENTION

48. Neither Section 129 of the Finance Act, 2025 nor the substituted proviso states that the new condition shall apply to adjudicatory proceedings pending on 01.10.2025. Nor is there a transitional provision identifying pending proceedings which would be governed by the earlier or the substituted regime.

49. Learned Senior Standing Counsel has placed emphasis upon the words “no appeal shall be filed” and submits that every Appeal filed after 01.10.2025 must necessarily satisfy the substituted proviso. The same submission, in substance, was considered and rejected in ***Hoosein Kasam Dada*** *(supra)*. The amended provision there also prohibited the admission of an appeal unless the newly prescribed

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deposit accompanied it. The Supreme Court held that such prohibitory language did not, by itself, disclose an intention to extinguish or impair an appellate right which had already vested.

50. The words "no appeal shall be filed" determine the stage at which compliance is required where the substituted proviso applies. They do not answer the anterior question as to which appellate regime governs proceedings initiated before the substitution. To treat the words as conclusive of temporal application would make the date of filing determinative in every case and would render the principles in ***Hoosein Kasam Dada*** *(supra)* and ***Videocon*** *(supra)* otiose.

51. The Respondents are correct that substitution ordinarily displaces the earlier provision and replaces it with the new one. That, however, does not by itself divest rights which had already accrued under the earlier law. The earlier provision is not kept alive for general application, but it continues to govern, for the limited purpose of preserving the vested appellate right, proceedings which commenced while it was in force.

52. The absence of an express saving clause also does not advance the Respondents' case. As explained in ***Videocon*** *(supra)*, where an amendment is not retrospective, rights and obligations crystallised upon commencement of the *lis* remain unaffected unless the amending enactment expressly or by necessary intendment provides otherwise. For that limited purpose, the pending proceeding continues as though the unamended appellate provision remained operative.

53. The structure of the substitution does not yield any necessary

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implication to the contrary. The earlier proviso required deposit of twenty-five per cent of the penalty in appeals against orders under Section 129(3). The substituted proviso reduces that requirement to ten per cent, but simultaneously extends the deposit condition to every penalty-only order. The amendment is therefore beneficial for one category of appellants and more onerous for another. Nothing in its language indicates that the latter burden was intended to attach to adjudicatory proceedings already initiated.

54. A legislative intention to impair a vested appellate right cannot be inferred merely from the fact that the amendment is expressed in general terms. Necessary intendment requires something in the language, scheme or unavoidable operation of the enactment which is inconsistent with the continuance of the earlier right. No such inconsistency is discernible here. The substituted proviso can operate fully and effectively in respect of adjudicatory proceedings initiated on or after 01.10.2025 without being applied to proceedings in which the appellate package had already vested.

55. The reliance placed upon the automatic stay contemplated under Section 107(7) does not alter this conclusion. Sub-section (7) prescribes the consequence which follows upon compliance with the deposit requirement applicable to a particular Appeal. It cannot be employed in reverse to determine which version of sub-section (6) governs the appellate right.

56. Likewise, the object of discouraging frivolous appeals or securing a part of the disputed liability cannot supply retrospective

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operation which the statutory language does not contain. A prospective amendment necessarily creates a temporal distinction between proceedings governed by the earlier law and those governed by the amended law. That consequence cannot justify imposing a subsequently introduced burden upon a vested appellate right.

57. This Court accordingly finds that the Finance Act, 2025 neither expressly nor by necessary implication subjects adjudicatory proceedings initiated before 01.10.2025 to the newly introduced ten per cent deposit in penalty-only cases. The substituted proviso does not, therefore, govern the appeals arising from the SCN dated 25.06.2025.

D. AUTHORITIES RELIED UPON BY THE RESPONDENTS

58. The Respondents have placed considerable reliance upon the Constitution Bench decision in ***Hardeodas Jagannath*** *(supra)*. There, Section 30 of the Assam Sales Tax Act, 1947 was amended with effect from 01.04.1958 so as to require payment of the assessed tax or penalty before entertainment of the appeal. The assessee contended that the amended condition could not apply to assessment periods which preceded the amendment. The Supreme Court rejected the contention upon noticing that the assessments were completed and the appeals were filed after the amendment.

59. The decision has to be understood in the context of the argument which was advanced and the chronology before the Court. In respect of the earlier return periods, the reassessment proceedings were initiated by notices dated 04.04.1959, after the amended Section

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30 had already come into force. The assessee relied upon the anterior assessment periods, not upon the commencement of adjudicatory proceedings under the earlier appellate regime.

60. ***Hardeodas Jagannath*** *(supra)* thus establishes that the mere fact that the taxable period or underlying transaction preceded the amendment does not preserve the earlier appellate regime where the proceedings giving rise to the Appeal themselves commenced thereafter. It does not decide the present situation, where a formal Show Cause Notice initiating adjudication and proposing personal penalties was issued before the more onerous condition came into force.

61. The decision neither considers nor displaces the principle that an appellate right vests upon initiation of the *lis*. It can therefore be harmoniously read with ***Hoosein Kasam Dada*** *(supra)*: an anterior transaction or assessment period is not decisive, but initiation of the proceedings which culminate in the Appeal is.

Surinder Singh Deswal and Ors. vs. Virender Gandhi

62. In ***Surinder Singh Deswal*** *(supra)*, the Supreme Court held that Section 148 of the Negotiable Instruments Act, 1881 could be applied to appeals arising from the Criminal complaints instituted before the provision was introduced. The Court distinguished ***Garikapati Veeraya*** *(supra)* and ***Videocon*** *(supra)* upon holding that Section 148 did not take away or affect the vested substantive right of appeal.

63. Section 148 of the N.I. Act is materially different in its

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operation. It empowers the Appellate Court, after an Appeal against conviction has been instituted, to direct the Appellant to deposit a minimum of twenty per cent of the fine or compensation during the pendency of the Appeal. The amount becomes payable pursuant to judicial direction, and the provision does not prohibit the institution of the Appeal itself. The subsequent decisions in ***Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Ltd***[11]. and ***Muskan Enterprises v. State of Punjab***[12] clarify that the use of the word "may" preserves a discretion to dispense with such deposit in an exceptional case.

64. The substituted proviso to Section 107(6) of the CGST Act, on the other hand, operates before the Appellate Authority can be approached. It prohibits the filing of the Appeal unless the payment of ten per cent of the penalty has already been made and does not confer any discretion upon the Appellate Authority to relax the condition. It therefore forms part of the terms of access to the appellate forum. The premise upon which ***Garikapati Veeraya*** *(supra)* and ***Videocon International*** *(supra)* were distinguished in ***Surinder Singh Deswal*** *(supra)* is absent in the present case.

Chandra Sekhar Jha v. Union of India and Anr.

65. Reliance is also placed by the Respondents upon ***Chandra Sekhar Jha*** *(supra)*, where the Supreme Court considered substituted Section 129E of the Customs Act, 1962. Under the earlier provision, an appellant was required to deposit the entire duty, interest or

[11] 2023 INSC 822
[12] 2024 INSC 1046

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penalty, subject to a discretionary power of waiver on the ground of undue hardship. The substituted provision reduced the deposit to 7.5 per cent or 10 per cent, imposed a ceiling of ₹10 crore and withdrew the discretion to waive.

66. The substituted Section 129E of the Customs Act, 1962 contained an express transitional proviso declaring that the new provision would not apply to appeals and stay applications already pending before an Appellate Authority on the date of commencement. The Supreme Court treated that clause as reflecting the statutory dividing line between the two regimes.

67. The appellant therein relied upon the fact that the incident had occurred before the substitution, although the adjudication order under the Customs Act was passed and the appeal was filed thereafter. He sought the benefit of the substantially lower fixed deposit under the new provision while also claiming the discretionary waiver available under the earlier provision. The Supreme Court declined to permit such a combination of the two regimes.

68. The present case differs materially. Section 107(6) contains no comparable transitional clause. The Petitioners rely upon commencement of adjudicatory proceedings and not on the date of the alleged transactions, and the amendment creates a pre-deposit condition where none existed for this category, and the Petitioners seek application of the entire appellate regime prevailing when the *lis* commenced, rather than favourable features of two regimes.

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<u>Barjinder Singh Kohli v. Assistant Commissioner of Revenue and Ors.</u>

69. ***Barjinder Singh Kohli*** (supra) before the Calcutta High Court concerned an Appeal which had itself been filed before the substituted proviso came into force. It therefore did not consider a right which vested before the amendment but became exercisable thereafter. The decision does not determine the present controversy, though it recognises that a pre-deposit requirement is a substantive condition affecting the right of appeal.

<u>E. WAIVER OF PRE-DEPOSIT</u>

70. The Respondents have relied upon ***Tecnimont*** *(supra)*, and the decision of a Coordinate Bench of this Court in ***M/s. Impressive Data Services*** *(supra)*. These decisions establish that 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.

71. This Court agrees with the said proposition. The Appellate Authority is a creature of statute and cannot dispense with an express condition which governs the Appeal. The communication dated 09.03.2026 is therefore correct insofar as it stated that the Appellate Authority possessed no statutory or inherent power to waive an applicable pre-deposit requirement.

72. The Petitioners are nevertheless entitled to relief on a different basis as the substituted proviso does not govern the appellate right of the Petitioners which attached to the proceedings commenced on

25.06.2025. The question of waiver, therefore, does not arise.

73. The fact that the Petitioners initially sought waiver or reduction of the pre-deposit does not determine the statutory regime applicable to their Appeals. An erroneous assumption made by a litigant regarding the applicable law cannot render applicable a statutory provision which otherwise does not govern the proceedings. Nor can there be an estoppel against the correct interpretation of a statute. In any event, the contention concerning temporal applicability was expressly raised at the preliminary hearing, whereupon notice was issued, and the Respondents were afforded an opportunity to address the question.

F. CONSTITUTIONAL VALIDITY CHALLENGE

74. Since this Court has held that the substituted proviso does not govern the Petitioners' Appeals, it is unnecessary to examine either its constitutional validity or the alternative prayer seeking waiver or reduction of the pre-deposit in exercise of writ jurisdiction. The constitutional validity challenge is left open for an appropriate case.

CONCLUSION

75. For the aforesaid reasons, the proviso to Section 107(6), as substituted with effect from 01.10.2025, does not govern the Petitioners' Appeals arising from the adjudicatory proceedings initiated by the SCN dated 25.06.2025. Their appellate remedy is governed by Section 107(6) as it stood on that date.

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76. Consequently, the Petitioners are not required to deposit ten per cent of the penalties imposed under the Impugned Order as a condition for filing their appeals. This shall, however, remain subject to compliance with Section 107(6)(a) in respect of any amount admitted by either of the Petitioners. The Appellate Authority shall register and entertain the appeals without treating the non-payment of ten per cent of the disputed penalties as a deficiency.

77. The present Writ Petition was instituted on 20.03.2026 while the question concerning the applicable pre-deposit regime remained under consideration. Accordingly, for the purpose of computing limitation under Section 107 of the CGST Act, the period from 20.03.2026 until the date of this judgment shall stand excluded. The Petitioners shall file their respective Appeals within four weeks from today. If any delay remains after such exclusion, the Petitioners may seek condonation under Section 107(4), which shall be considered by the Appellate Authority in accordance with law.

78. No coercive steps for recovery of the penalties imposed upon the Petitioners shall be taken for a period of four weeks from today. If the Appeals are filed within the aforesaid period, the statutory consequence contemplated under Section 107(7) shall only follow subject to compliance with the applicable requirements of Section 107(6).

79. The communication dated 09.03.2026 does not warrant any interference insofar as the Appellate Authority correctly stated that it possessed no power to waive an applicable statutory pre-deposit. The

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communication shall, however, not preclude the Petitioners from filing their Appeals in accordance with the statutory regime held applicable by this Court.

80. This Court has not examined the merits of the Impugned Order or the penalties imposed on the Petitioners. All contentions in that regard are left open for consideration by the Appellate Authority.

81. The present Writ Petition is, accordingly, allowed in the aforesaid terms. The pending applications also stand closed.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

JULY 31, 2026
sp/ad