GSTAT

Court No. Court II

APL/456/HYD/2026

HERO WIRETEX LIMITED .....**Appellant**

Versus

COMMISSIONER OF CGST, COMMISSIONER OF CGST, HYDERABAD - 1 & ORS. .....**Respondent**

Counsel for Appellant	**Counsel for Respondent**
ASHISH KUMAR AGRAWAL SHRI MOHAN RAO	SHRI GOURI SHANKAR AND SHRI BENU GOPAL

Hon'ble A P Ravi, Member(Judicial)
Hon'ble Duvvuri Krishna Srinivas, Member (Technical)

INTERIM ORDER No. 001/HYD/COURT HALL-II/2026

Dated: 18.09.2026

Per: A P Ravi, Judicial Member:

1. The appellants challenge Order IA No. HYD-GST-RRC-APP1-COMMR-060-25-26 dated 31 October 2025 passed by the First Appellate Authority, whereby the appeal preferred under Section 107 of the Central Goods and Services Tax Act, 2017 was dismissed. The impugned order affirmed the Adjudicating Authority's decision confirming imposition of penalty of ₹30,34,69,718 under Sections 122(1)(i) and 122(1)(vii) of the Act. The appellants seek appropriate relief against the said order.

www.taxcode.in

2. Pursuant to an investigation by the Directorate General of GST Intelligence (DGGI), it is alleged that the appellants availed input tax credit without receipt of goods and issued invoices without actual supply. Consequently, a show-cause notice was issued, making the following demands:

a. IGST of ₹5,77,45,147/- for the alleged wrong availment – under Section 74(1) of the Act, along with interest under Section 50 of the Act;

b. CGST of ₹4,66,73,124/- for the alleged wrong availment – under Section 74(1) of the Act, along with interest under Section 50 of the Act;

c. SGST of ₹4,66,73,124/- for the alleged wrong availment – under Section 74(1) of the TSGST Act, along with interest under Section 50 of the TSGST Act;

d. Penalty equivalent to the tax specified in (a), (b) & (c) of the respective Acts, were proposed to be imposed under Sections 122 (1)(vii) read with Section 74(1) of the respective Acts.

e. Penalty of ₹15,10,91,395/- (IGST – 5,77,45,147/-, CGST – ₹4,66,73,124/- & TSGST – ₹4,66,73,124/-) equivalent to the ITC alleged to have been wrongly availed based on invoices without supply of goods/services – under Section 122(2)(b) of the respective Acts.

f. Penalty of ₹15,23,78,323/- (IGST – ₹32,09,897/-, CGST – ₹7,45,84,213/- & TSGST – ₹7,45,84,213/-) equivalent to ITC alleged to have passed on without actual supply of goods/services – under Section 122(1)(ii) of the respective Acts.

g. *Proposals for personal penalties were also made on the Managing Director & Chief Financial Officer under Section 122 (3) of the respective Acts.*

3. The AA declined to pursue recovery of the alleged wrongful ITC and the tax demand for invoices without supply, but proceeded to impose the penalties noted above. On appeal, the appellant's challenge was dismissed by the First Appellate Authority, which upheld the AA's order.

4. The appellants instituted the present appeal on 29.03.2026 under Section 112(1) of the Act, without tendering any pre-deposit. The Registry, therefore, issued a defect memo drawing attention to the non-payment of the statutory pre-deposit. The appellants impugn the jurisdiction of the Directorate General of GST Intelligence (DGGI) to have issued the show-cause notice dated 24.12.2021, pleading that no competent or "proper officer" had been validly appointed to exercise jurisdiction under Section 122 of the Act until the issuance of Circular No. 254/11/2025-GST dated 27 October 2025. It is further contended that the said circular operates prospectively and cannot be given retrospective application to validate purported prior acts or orders. Reliance is placed on the thesis that the impugned adjudication is therefore non-est and, consequently, the obligation to furnish a pre-deposit as envisaged by Section 112(8) of the Act does not arise. At the hearing before this Bench on 02.07.2026, Shri Ashok Kumar Aggarwal, Chartered Accountant for the appellants, advanced the following three grounds in support of the submission that no pre-deposit is exigible in the present proceedings:

a) *The order is non-est in view of the fact that proper officer was not appointed at that point of time to adjudicate and to issue the show cause notice;*
b) *The issue pertains to the years 2017-18 and 2018-19 where there were no clear directions with regard to pre-deposit on only penalty cases; and*
c) *That the impugned order was passed prior to 1.10.2025 i.e., the date on which pre-deposit was mandated for penalty alone cases and that it does not have the retrospective effect.*

5. The appellants have filed written submissions opposing the insistence on a pre-deposit. They assert that a prima facie case exists on the merits and contend that the Directorate General of GST Intelligence (DGGI) lacked authority to issue any notice seeking imposition of penalty under Section 122 of the Act. It is averred that powers to the DGGI in this regard were first conferred only by Circular No. 254/11/2025-GST dated 27 October 2025, operative from that date; accordingly, any action purportedly taken by the DGGI prior thereto is without jurisdiction and cannot give rise to an obligation to furnish the statutory pre-deposit.

6. Heard the Learned Counsel appearing for the appellants and also the Learned Department Representative and also the grounds filed in connection with the defect raised by the Registry.

7. The appellants submit that the proviso to Section 112(8) of the Act — which mandates a pre-deposit equal to 10% of the penalty in appeals — was introduced with effect from 1 October 2025 and therefore applies only to proceedings instituted on or after that date. In the present case the adjudicating order was passed prior to the said date and, consequently, the proviso cannot be held to govern these proceedings.

7.1 The appellants further contend that the proviso cannot be applied as a mechanical or blanket requirement where the foundational show-cause notice or adjudication is, on its face, without jurisdiction or non-est. Where the impugned proceedings are vitiated ab initio, the condition precedent of a pre-deposit should not be permitted to operate as an extraneous fetter which would, in effect, nullify the statutory right of appeal.

6.1 It is urged that the statutory right of appeal, once conferred, must be made effective, practical and substantive. Requiring a pre-deposit in the circumstances of this case would operate to extinguish or severely curtail the appellants' right of access to the appellate forum. The application of the proviso must therefore be governed by principles of fairness, proportionality and access to justice.

6.2 Finally, the appellants submit that waiver or relaxation of the pre-deposit requirement in the present facts would not cause prejudice to the revenue, whereas insistence thereon would result in disproportionate hardship to the appellants and deny them an effective remedy.

8. Per contra, Respondent 3 in their para-wise reply dated 06.08.2026 submitted vehemently opposes the plea for waiver of pre-deposit by the appellant. The revenue contents that it is a settled principle of law that the right to file an appeal is not an inherent right but a statutory right conferred by the legislature and that such right can be exercised only by fulfilling the conditions stipulated in Statute.

9. The Respondents further submit that maintainability must be determined by reference to the statute as it stood at the relevant time, and that the appellants have no vested right to invoke a subsequent legislative amendment to evade conditions precedent to the admission of an appeal. They contend that interim or pendente-lite orders in other proceedings cannot operate as a blanket exemption from statutory requirements; compliance with Section 112(8) of the CGST Act cannot be avoided by reliance on outcomes in parallel or pending litigation.

10. The short matter to be decided is whether the appellants were required to remit pre-deposit of 10% in terms of proviso to Section 112(8) of the Act or not, for a penalty alone appeal, on an order that was passed well before the introduction of the said proviso i.e., on 01.10.2025?

11. The provisions of Section 112(8) of the Act, as it stood on the date of filing of the instant appeal, which is the relevant date to be reckoned, is reproduced below for ease of reference:

> *(8) 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 [5][ten per cent.] of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, [3][subject to a maximum of [5][twenty crore rupees]] , in relation to which the appeal has been filed.*

> [1][*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, in addition to the amount payable under the proviso to sub-section (6) of section 107 has been paid by the appellant.*]

The proviso, as above, was very much in force on the date of passing of the impugned order viz., 31.10.2025 and therefore, it is just and proper that the instant appeal ought to be in compliance with the said proviso.

12. We observe that the appellants base their claim for exemption from the pre-deposit requirement on the premise that the adjudicating order predates the insertion of the proviso and, being a penalty-only appeal, attracts no obligation to furnish a pre-deposit. That submission, however, is unsupported by any judicial authority cited on behalf of the appellants.

13. The Department, on the other hand, contends that maintainability is to be determined by reference to the statute as it stood at the time of filing the appeal and that the appellants were therefore obliged to deposit 10% of the penalty in terms of the proviso to Section 112(8). Reliance is placed upon the decision of the High Court of Allahabad in M.M. Traders v. State of U.P. & Ors., wherein the petitioners were directed to furnish the prescribed pre-deposit. Although the matter was subsequently placed before the Hon'ble Supreme Court, which admitted the appeals without insisting on the pre-deposit, such admission was subject to the outcome of the Special Leave Petitions.

14. We find that both the appellants and the Department have proceeded on the incorrect factual premise that the adjudicating order was rendered prior to the insertion of the proviso to Section 112(8) of the Act, and have advanced their respective contentions on that basis. The appellants further contend that where the *lis* commenced before the proviso became operative, the amended provision cannot be applied and hence no pre-deposit is exigible. Although no authority has been cited in support of that submission, we note that the Hon'ble Supreme Court in Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh (2002-TIOL-363-SC-CT) has considered analogous issues in the context of the Madhya Pradesh Sales Tax statute and has observed as follows:

> *"9. The above decisions quite firmly establish and our decisions in Janardan Reddy v. The State, A.I.R. 1951 S.C. 124 and in Ganpat Rai v. Agarwal Chamber of Commerce Ltd., A.I.R. 1952 S.C. 409 uphold the principle that a right of appeal is not merely a matter of procedure. It is a matter of substantive right. This right of appeal from the decision of an inferior tribunal to a superior tribunal becomes vested in a party when proceedings are first initiated in, and before a decision is given by the inferior Court. In the language of Jenkins C.J., in Nana v. Sheku (supra) to disturb an existing right of appeal is not a mere alteration in procedure. Such a vested right cannot be taken away except by express enactment or necessary intendment. An intention to interfere with or to impair or imperil such a vested right cannot be presumed unless such intention be clearly manifested by express words or necessary implication."*

15. The decision of the Hon'ble High Court of Delhi in Gaurav Jain v. Joint Commissioner (Appeals)-II, CGST Delhi Zone & Anr., (2026-TIOL-914—HC-DEL-GST) is directly on point. In Gaurav Jain the Court examined the amendment to Section 107(6) of the CGST Act, which took effect from

01.10.2025. The show-cause notice in that case was issued on or before 25.06.2025, so the *lis* was instituted before the amendment came into force. The High Court held that where proceedings are instituted prior to the effective date of an amendment, the rights and obligations arising from those proceedings are governed by the law as it stood at their inception. Consequently, appeals arising out of such pre-amendment proceedings, even if filed after 01.10.2025, are not subject to the pre-deposit requirement introduced by the amended Section 107(6).

15.1 The Court applied the established principle that a statutory provision imposing a new substantive burden should not be applied retroactively to ongoing proceedings unless the legislature's intention to the contrary is clear. As the law looks forward, not backward, the amendment could not be read to impair vested rights or impose fresh conditions on proceedings already commenced.

15.2 Applied to the case on hand, the case of Gaurav Jain dictates that because the *lis* commenced before 01.10.2025, any appeals arising from those proceedings are not liable to the post-amendment pre-deposit requirement. Where the cause of action and proceedings pre-date the amendment to Section 107(6), parties are entitled to proceed under the law in force when the *lis* began; the amended pre-deposit obligation cannot be imposed retrospectively.

15.3 The ratio in Gaurav Jain is directly applicable to Section 112(8). Both Section 107(6) and Section 112(8) operate on the same textual footing concerning pre-deposit obligations for appeals; the identical statutory

language and shared legislative purpose establish that the High Court's interpretation of Section 107(6) controls the construction of Section 112(8).

15.4 The *lis* in this matter arose from a show-cause notice dated 24.12.2021. The parties' rights and obligations are governed by the law in force when the proceedings commenced. Section 112(8), as it stood on 24.12.2021, did not impose a pre-deposit requirement for penalty-only cases. The amendment introducing a pre-deposit obligation with effect from 01.10.2025 cannot be applied retrospectively to create a new condition for appeals originating from proceedings instituted before that date.

15.5 Consequently, the Registry's objection that a pre-deposit was required is unsustainable. No pre-deposit was payable at the time the appeal was filed, and the appeal should not be rejected on that ground.

16. The contention that the DGGI officials lacked jurisdiction to levy the demand or to propose penalty is not being considered at this stage. The sole issue presently before this Bench at this stage is limited to the defect notified by the Registry concerning payment of the statutory pre-deposit; questions of jurisdiction and other pleas shall be adjudicated at the appropriate stage.

17. In the result, the Registry's objection premised on non-payment of pre-deposit is held to be misconceived and is therefore set aside for the limited purpose of admission. The appeal is admitted and the Registry is directed to assign a number to the appeal and place it on the board for hearing in the ordinary course. All contentions, pleas and evidence are permitted to be urged and relied upon at the final hearing. This interim

order is confined to the question of admission and shall not prejudice the rights of any party or the Tribunal's ultimate adjudication on the merits.

(Interim Order pronounced in the open court on 18.09.2026)

(A P Ravi)

(Duvvuri Krishna Srinivas)

Dated: 18.09.2026