GSTAT

State Bench Ghaziabad

Division Bench Court No. Court I

Filing No 2026109301001633

VINEET KUMAR **.....Appellant**

Versus

M/S SWASTIK ENTERPRISES, PROP, T 1701 NEAR DAK KHANA MALKA GANJ DELHI DELHI DLNRD 110007 **.....Respondent**

Quorum

Hon'ble Dr. Sanjay Kumar Chandhariyavi, Member(Judicial)
Hon'ble Sungita Sharma, Member (Technical)

Counsel for Appellant **Counsel for Respondent**

ORDER

1. Preliminary

1.1 From perusal of case record it transpire that Ramesh Kumar (GSTIN: 09BALPK3776R1ZN), having his address at 180/5, Rajender Nagar Industrial Area, Mohan Nagar, Ghaziabad, Uttar Pradesh–201007, filed Appeal No. AD090124099393U dated 23.01.2024 against Order No. ZD090124056296C dated 08.01.2024, imposing a penalty of ?44,908, comprising ?22,454 each under CGST and SGST. After a personal hearing on 24.02.2024, Shri Dharm Vir Singh, Additional Commissioner, Grade-II (Appeal), Ghaziabad, passed Order No. ZD0903242774355 dated 28.03.2024, modifying the original order and reducing the penalty to ?5,000, comprising ?2,500 each under CGST and SGST.

1.2 We heard the learned Authorised Representative and examined the appeal memorandum, the impugned order and the material on record. It is settled legal position that Admission of an appeal is not a mere formality. Before considering the merits, the Tribunal must be

satisfied that the appeal is maintainable and meets the conditions for admission. Filing an appeal does not, by itself, give the appellant a right to a hearing on merits. The right of appeal is created by statute and must be exercised subject to the conditions prescribed by law. In Ganga Bai v. Vijay Kumar, (1974) 2 SCC 393, Hon'ble Supreme Court explained the distinction between a suit and an appeal. A civil suit may ordinarily be brought unless barred by law, but an appeal requires clear statutory authority. In Anant Mills Company Ltd. v. State of Gujarat, (1975) 2 SCC 175, Hon' ble Supreme Court recognised that the legislature may impose conditions on the exercise of the right of appeal, provided they are not so onerous that the right becomes practically illusory.

2. The question at the admission stage

2.1 This is a departmental appeal. The first question is therefore whether the Department has complied with the statutory and administrative conditions governing such an appeal. The existence of a grievance against the impugned order does not, by itself, answer that question. Section 120 of the Uttar Pradesh Goods and Services Tax Act, 2017, bears the heading "Appeal not to be filed in certain cases". Section 120(1) provides:

2.2 "(1) The Commissioner may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as he may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the State tax under the provisions of this Chapter."

2.3 Under this provision, the Commissioner, State Tax, Uttar Pradesh, issued Circular No. 2425008 dated 05.07.2024. It prescribes a monetary limit of Rs. 20,00,000 for departmental appeals before GSTAT, subject to specified exceptions. Its purpose is to reduce government litigation and ensure proper use of judicial resources.

2.4 The State's litigation-management framework continued through Circular No. 252/2026-27/State Tax dated 22.05.2026, concerning monetary limits, review of departmental appeals and litigation before GSTAT and the higher constitutional courts. The monetary-limit policy cannot, therefore, be treated as an abandoned administrative arrangement.

3. Issues for determination

3.1 Does the monetary limit of Rs. 20,00,000 apply to this departmental appeal?

3.2 Is the disputed amount, calculated in the manner prescribed by the circular, below that limit?

3.3 If so, has the Revenue specifically pleaded and established a recognised exception?

3.4 Is a statement that the Commissioner has approved or authorised the appeal sufficient to establish an exception?

3.5 Does filing and pursuing the appeal without establishing an exception violate the binding litigation policy?

3.6 What is the consequence of this failure at the admission stage?

3.7 Can the appeal be admitted and heard on merits?

4. Calculation of the disputed amount

4.1 The circular prescribes the following method for applying the monetary limit:

4.2 Where tax is disputed, with or without interest or penalty, only the aggregate disputed tax, including CGST, SGST or UTGST, IGST and Compensation Cess, is taken into account.

4.3 Where only interest is disputed, the disputed interest is considered.

4.4 Where only penalty is disputed, the disputed penalty is considered.

4.5 Where only late fee is disputed, the disputed late fee is considered.

4.6 Where interest, penalty and/or late fee are disputed, but no tax is disputed, their aggregate disputed amount is considered.

4.7 Where an erroneous refund is disputed, the disputed refund amount, including the relevant tax and Compensation Cess components, is considered.

4.8 The limit applies to the disputed amount for which the appeal or application is proposed.

4.9 Where a composite order disposes of more than one appeal or demand notice, the relevant amounts are taken together. The limit is not applied separately to each appeal or demand notice.

4.10 Thus, where the demand includes tax, interest and penalty, the relevant amount is the disputed tax and cess. Interest and penalty are not added to that amount for this purpose. If the amount so calculated is below Rs. 20,00,000, the monetary restriction applies unless a

recognised exception is established. On examining the record, we find that the disputed demand is penalty of ?44,908, comprising ?22,454 each under CGST and SGST which is below Rs. 20,00,000. Hence we find that monetary-limit restriction is therefore attracted.

5. Exceptions to the monetary limit

5.1 An amount below the monetary limit does not end the enquiry. Clause 4 of the circular permits departmental litigation, irrespective of the monetary limit, in the following circumstances:

5.2 A provision of the CGST Act, UPGST Act, IGST Act or GST (Compensation to States) Act has been held unconstitutional.

5.3 A rule or regulation made under any of those Acts has been held to exceed the authority conferred by the parent Act.

5.4 An order, notification, instruction or circular issued by the Government or the Board has been held to be contrary to the relevant GST Act or Rules.

5.5 The matter concerns valuation, classification, refunds, place of supply or another issue which is recurring and/or involves interpretation of the Act, Rules, notification, circular, order or instruction.

5.6 Strictures or adverse comments have been made, and/or costs have been imposed, against the Government, the Department or its officers.

5.7 The Commissioner considers it necessary to contest a case or class of cases in the interest of justice or revenue.

6. Burden of establishing an exception

6.1 An exception cannot be presumed merely because the Department wishes to pursue an appeal. The party relying on an exception must establish that it applies. Once the disputed amount is shown to be below Rs. 20,00,000, the Revenue must identify the exception, state the facts supporting it and show the statutory or administrative basis for invoking it.

6.2 If the Revenue relies on the Commissioner's residual power to contest a matter in the interest of justice or revenue, it must produce the order or recorded opinion showing that the Commissioner exercised that power in the particular case. These requirements cannot be left to inference. A bare statement that the appeal has been filed with the Commissioner's permission is not sufficient.

7. Authorisation and compliance with the monetary limit

7.1 Permission to file an appeal and compliance with the conditions governing that appeal are separate matters. An authorisation to file an appeal does not, by itself, establish an exception to the monetary limit.

7.2 Section 112(3) of the UPGST Act, 2017, provides:

"(3) The Commissioner may, on his own motion, or upon request from the Commissioner of central tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or under the Central Goods and Services Tax Act, 2017 for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed or the date, as may be notified by the Government, on the recommendations of the Council, for the purpose of filing application before the Appellate Tribunal under this Act, whichever is later, for determination of such points arising out of the said order as may be specified by the Commissioner in his order."

7.3 The provision requires the Commissioner to examine the record, form an opinion on the legality or propriety of the order, and identify the points to be placed before the Tribunal. The record must enable the Tribunal to examine the basis of that decision. A bare assertion that the Commissioner has granted permission does not meet this requirement.

7.4 Section 112(4) further provides:

"(4) Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107 or under sub-section (1) of section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1)."

7.5 An application authorised under Section 112(3) is therefore dealt with as an appeal under the Act. That authorisation does not dispense with Section 120 or the monetary-limit

instructions issued under it. Where the residual exception is invoked, the record must show that the Commissioner considered this particular case and formed the opinion that it should be contested despite the monetary limit. The basis of that opinion must be apparent. General approval cannot serve as a substitute. Otherwise, every appeal below the limit could proceed on routine authorisation, defeating the policy itself.

8. Continuing litigation policy of Uttar Pradesh

8.1 Circular No. 252/2026-27/State Tax dated 22.05.2026 provides a structured review mechanism through Zonal Law Committees and continues the policy of limiting departmental litigation by monetary thresholds, subject to specified exceptions.

8.2 This policy requires institutional discipline. The Department cannot treat it as binding when it assists the Department and as optional when it restricts an appeal. The State is expected to conduct litigation responsibly and consistently with its declared policy. In Director of Income Tax v. S.R.M.B. Dairy Farming (P) Ltd., the Supreme Court recognised the need to reduce unnecessary government litigation and repeated proceedings through different levels of judicial scrutiny.

9. Binding effect of departmental circulars

9.1 The Department cannot rely on a statutory litigation-control mechanism when convenient and disregard it merely because an order has gone against it. In Ranadey Micronutrients v. Collector of Central Excise, (1996) 10 SCC 387, the Supreme Court stressed the importance of consistency and discipline in following departmental circulars. It held that the Revenue could not repudiate the Board’s circular on the ground that it was inconsistent with a statutory provision.

9.2 The principles applied under comparable revenue laws also support the conclusion that instructions issued by the competent revenue authority to regulate departmental appeals bind departmental officers.

10. The right of appeal and the conditions governing it

10.1 The Revenue may argue that Section 112 gives it a statutory right of appeal and that an appeal directed by the Commissioner must be admitted. We cannot accept that argument as an absolute proposition. Section 112 must be read with the provisions governing departmental litigation, including Section 120.

10.2 As explained in Ganga Bai and Anant Mills, the right of appeal is statutory and may be subject to conditions. The existence of appellate jurisdiction does not require the Tribunal to admit every departmental appeal without examining compliance with those conditions.

11. Whether an exception is established in this case

11.1 We have examined the record and FORM GST APL-07. The appellant states that this appeal has been filed under Section 112(3) of the UPGST Act. However, the Revenue has neither specifically pleaded nor established any recognised exception to the monetary limit. There is no material showing that a provision of the relevant GST Acts has been held unconstitutional; that a rule has been held contrary to its parent Act; or that a notification, circular or instruction has been held invalid. Nor has the Revenue shown that this case involves a recurring question of law requiring authoritative determination, that adverse comments or costs have been imposed against the Department, or that the Commissioner has recorded the required opinion for contesting this particular case in the interest of justice or revenue despite the monetary limit. We therefore find that the Revenue has failed to establish an applicable exception.

12. Effect of the monetary limit

12.1 The right of appeal must be exercised within the statutory framework. In State of Maharashtra v. Greatship (India) Ltd., the Supreme Court reiterated that an appeal is a creation of statute. The Department’s right is accordingly subject to the conditions and regulatory provisions of the statutory scheme. In Commissioner of Commercial Tax v. Vikram Cement, decided on 5 February 2026, the Supreme Court considered the Rs. 20 lakh GST monetary limit and held that the circular applied to pending appeals as well. The appeals involving a tax component below the prescribed limit were dismissed, while the legal question was left open for an appropriate case. In Director of Income Tax v. S.R.M.B. Dairy Farming (P) Ltd., the Supreme Court noted that repeated government litigation contributes to the growing number of pending cases. It referred to the National Litigation Policy and the need to secure decisions on meaningful issues rather than pursue multiple levels of scrutiny merely for their own sake. In Commissioner of Customs, New Delhi v. Balaji Overseas, the Supreme Court also disposed of the appeals on the ground of low tax effect, having regard to the applicable monetary threshold. The disputed amount in those

appeals was Rs. 1,28,73,481.

12.2 Tax law is part of public law. The State has extensive powers to collect taxes, but those powers must be exercised according to law. The same requirement applies when the State litigates. An appeal is not an unrestricted means of challenging every adverse order. The revenue involved, the legal importance of the issue, the public interest, the cost of litigation and the need for authoritative determination must be considered.

12.5 The Rs. 20 lakh limit does not mean that a smaller demand has no legal importance. It reflects the policy that, ordinarily, public resources are better used by avoiding departmental appeals below that amount, unless a specified exception applies.

13. Maintainability must be examined before the merits

13.1 The Revenue has invited us to consider the merits of the dispute. We decline to do so because maintainability must be decided first. The Tribunal cannot decide the merits and only afterwards examine whether the appeal met the conditions for admission. An arguable case on merits does not, by itself, overcome the binding monetary-limit policy.

14. Public interest and responsible litigation

14.1 Government litigation uses judicial time, departmental resources and public money. It also takes the time of officers and taxpayers and uses the Tribunal's limited capacity. The monetary-limit policy is intended to ensure that the State litigates where the amount involved, the legal significance, the recurring nature of the issue, the public interest or a recognised exception justifies doing so.

14.2 The statutory scheme also protects the Revenue from being treated as having accepted a disputed legal position merely because an appeal is not filed under the monetary-limit policy. Section 120(2) and (3) of the UPGST Act provide:

"(2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the State tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the State tax from filing appeal or application in any other case involving the same or similar issues or questions of law."

14.3 "(3) Notwithstanding the fact that no appeal or application has been filed by the officer of the State tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the State tax has acquiesced in the decision on the disputed issue by not filing an appeal or

application."

14.4 Section 120(4) further provides:

"(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the State tax in pursuance of the orders or instructions or directions issued under sub-section (1)."

15. Findings

15.1 This is a departmental appeal and is governed by the monetary-limit policy applicable to departmental litigation.

15.2 The relevant disputed demand is penalty of ?44,908, comprising ?22,454 each under CGST and SGST which is below Rs. 20,00,000.

15.3 The Revenue has failed to establish any recognised exception to the monetary limit.

15.4 No material shows that the Commissioner specifically exercised the residual power, with reasons relating to this case, so as to bring the appeal within an exception. A mere statement that the Commissioner has approved or authorised the appeal cannot replace compliance with the statutory provisions and binding litigation policy.

15.5 The appeal cannot therefore be admitted for adjudication on merits.

16. Order

16.1 For the reasons stated above, we hold that this departmental appeal involves a disputed penalty of ?44,908 which is below the prescribed monetary limit of Rs. 20,00,000. The Revenue has failed to establish any recognised exception. The appeal therefore does not meet the conditions governing its admission and maintainability before this Tribunal.

16.2 Accordingly, the appeal is dismissed at the threshold on the ground of the prescribed monetary limit and the Revenue's failure to establish an applicable exception. We have not examined or decided the merits of the tax dispute. Nothing in this order shall be read as approving or rejecting the correctness of the impugned order on merits. The dismissal is confined to the maintainability of the departmental appeal under the applicable monetary-limit policy. The appeal stands disposed of accordingly.

16.3 The Registrar shall supply a copy of this order to the appellant.

16.4 Pronounced in open Tribunal.

(Dr. Sanjay Kumar Chandhariyavi)

(Sungita Sharma)

Dated: 06.10.2026