GSTAT

State Bench Raipur

Division Bench Court No. Court I

APL/16/RPR/2026

D AND SONS MOTORS PRIVATE LIMITED **.....Appellant**

Versus

SHRI PUSHPENDRA KUMAR MEENA, COMMISSIONER OF STATE TAX, NORTH BLOCK, SECTOR-19, ATAL NAGAR (NAWA RAIPUR), RAIPUR, CHHATTISGARH-492002 & ORS. **.....Respondent**

Quorum

Hon'ble Pradeep Kumar Vyas, Member (Judicial)
Hon'ble Chandra Bhushan Singh, Member (Technical)

Counsel for Appellant	**Counsel for Respondent**
MR. D P DEWANGAN, ADVOCATE	MR. ASHWIN MISHRA, ADVOCATE

ORDER

(Order on preliminary maintainability)

Per: C.B. Singh, Member (Technical)

1. Heard the learned Counsel for the appellant and the learned Authorised Representative for the respondent on the question of maintainability of the appeal.

2. The appeal under Section 112 of the CGST/Chhattisgarh GST Act, 2017 arises from Appeal Case No. 1167/GST/2024. The reasoned Order-in-Appeal dated 16.12.2024 rejected the first appeal as barred by limitation; FORM GST APL-02 recording the rejection was generated on 17.01.2025.

3. The first appeal in FORM GST APL-01 was filed on 04.11.2024 against demand order/FORM GST DRC-07 dated 12.12.2023 and was rejected on limitation. The appellant thereafter approached the Hon'ble High Court of Chhattisgarh in WPT No. 47 of 2025. By order dated 02.04.2025, liberty was granted to avail the remedy under Section 112 upon constitution of the Tribunal, subject to statutory deposit and decision in accordance with law.

4. The appellant thereafter preferred the present appeal. By order dated 31.07.2026, upon scrutiny in terms of Office Order No. 3/GSTAT/PB/2026 dated 14.05.2026, the appeal was directed to continue before the Division Bench and the respondent was permitted to file its reply and/or memorandum of cross-objections.

PRELIMINARY OBJECTION AND SUBSEQUENT COMPLIANCE

5. The respondent objected that the appellant had itself admitted liability of ₹8,573 towards ITC mismatch and ₹1,90,047 towards the net GSTR-1/GSTR-3B difference, aggregating to ₹1,98,620, but had not discharged the admitted amount with consequential interest and penalty before filing the present appeal.

6. When the matter was taken up on 08.09.2026, the learned Authorised Representative for the appellant fairly admitted that the admitted amount had not been paid and sought time to make good the deficiency. The appellant was accordingly permitted to place proof of payment on record along with an appropriate application explaining the delay and seeking such relief as might be permissible in law.

7. On 14.09.2026, the appellant discharged the admitted tax liability of ₹1,98,620 (CGST ₹99,310 and SGST ₹99,310), together with interest of ₹3,04,932 and penalty of ₹19,862, aggregating to ₹5,23,414, through FORM GST DRC-03/DRC-03A. The said amounts were duly adjusted against the respective liabilities.

8. By application dated 14.09.2026, the appellant attributed the earlier omission to inadvertence and sought acceptance of the payment and condonation of the resulting delay.

9. On 16.09.2026, this Bench noticed that the admitted amount ought to have been paid even before filing the first appeal in terms of Section 107(6)(a), and expressly kept open the legal effect of subsequent payment upon the maintainability of the first appeal and, consequentially, the present appeal. The appellant was afforded an opportunity to institute an appropriate application explaining the delayed compliance and its legal basis. No opinion on maintainability was expressed at that stage.

10. At the hearing on 22.09.2026, the respondent submitted that, notwithstanding the payment made on 14.09.2026, a further component of the liability treated by the appellant itself as admitted had earlier been adjusted against Cess credit and had not been deposited under the appropriate CGST and SGST heads. The appellant sought two days' time to verify the position and, if necessary, make good the deficiency. The hearing and arguments on maintainability concluded on 22.09.2026, and judgment was reserved. The appellant was allowed until 24.09.2026 to furnish proof of compliance with the objection raised at that hearing.

11. In response to the respondent's objection raised at the hearing on 22.09.2026, the appellant made a further payment, evidenced by the challan dated 23.09.2026 and FORM GST DRC-03/DRC-03A dated 24.09.2026, comprising tax of ₹31,420 (CGST ₹15,710 and SGST ₹15,710), interest of ₹48,644 and penalty of ₹3,142, aggregating to ₹83,206. The said amounts were duly adjusted against the respective liabilities on 24.09.2026.

ISSUE FOR DETERMINATION

12. The issue is whether non-payment of the admitted liability before presentation renders the appeal incurably non-maintainable, or whether subsequent payment makes the appeal duly filed on the date of compliance, with the resulting delay being amenable to Section 112(6).

STATUTORY FRAMEWORK AND APPLICABLE PRINCIPLES

13. Section 112(8) mandates that no appeal shall be filed under sub-section (1) unless the appellant has paid in full the admitted amount of tax, interest, fine, fee and penalty arising from

the impugned order, as required under clause (a), in addition to the statutory pre-deposit prescribed under clause (b).

14. In *Vijay Prakash D. Mehta v. Collector of Customs, (1988) 4 SCC 402*, the Hon'ble Supreme Court held that a statutory right of appeal is exercisable subject to the conditions imposed by the statute; the appellate authority cannot disregard such conditions.

15. *Narayan Chandra Ghosh v. UCO Bank, (2011) 4 SCC 548*, likewise holds that a statutory Tribunal cannot waive a mandatory appellate condition beyond the authority conferred by the statute.

16. Section 112(8)(a) is therefore mandatory. Administrative registration cannot dispense with it. The present question is not waiver, but the legal effect of subsequent compliance.

17. That question is more directly answered by the decision of the Hon'ble Supreme Court in *Lalta Prasad Khinni Lal v. Assistant Commissioner (Judicial), Sales Tax, Kanpur & Another, (1972) 4 SCC 505: AIR 1972 SC 401: 29 STC 201*. There, although the memorandum of appeal had been presented within limitation, the amount of tax admittedly due was deposited in full only after expiry of limitation. The Hon'ble Supreme Court held that the appeal became properly entertainable upon payment of the admitted tax and was to be treated as properly filed on the date on which such payment was made. Where that date fell beyond the prescribed limitation, the statutory provision empowering condonation of delay became attracted and the appellate authority was required to consider whether sufficient cause had been shown.

18. *Lalta Prasad Khinni Lal (supra)* is directly relevant because the deficiency there, as here, concerned admitted tax. It preserves the mandatory payment condition while recognising legal effect to its subsequent fulfilment.

19. We are conscious that the statutory provision considered in *Lalta Prasad Khinni Lal (supra)* employed the expression that no appeal shall be *'entertained'* without satisfactory proof of payment, whereas Section 112(8) uses the expression *'No appeal shall be filed ... unless'* the prescribed amounts have been paid. In our considered view, the difference in terminology does not assist the appellant in claiming that the original physical presentation itself constituted a duly filed appeal notwithstanding non-payment. On the contrary, giving full effect to the stricter expression employed in Section 112(8), the appropriate conclusion is that, although the memorandum stood de facto presented earlier, the appeal became de jure duly filed only upon fulfilment of the mandatory payment condition. The date of such fulfilment must therefore be taken into account for determining limitation.

20. This construction harmonises the authorities: the earlier deficient presentation is not treated as a duly filed appeal; once the mandatory condition is fulfilled, the resulting delay is dealt with under the statutory condonation provision.

21. The statutory provision considered in *Shyam Kishore v. Municipal Corporation of Delhi, (1993) 1 SCC 22*. prohibited hearing or determination of an appeal unless the disputed amount was deposited. The Hon'ble Supreme Court held that the appellate authority could not waive the statutory deposit, but recognised that an opportunity could be afforded to the appellant to make the deposit before the appeal was heard and determined. *The decision thus reinforces the distinction between impermissible waiver of a statutory condition and permitting the appellant an opportunity actually to satisfy that condition.*

22. *Shyam Kishore (supra)* concerned different statutory language and is relied upon only for that distinction. On The remaining question of limitation after subsequent compliance, *Lalta Prasad Khinni Lal (supra)* furnishes the more direct principle.

23. Section 112(1) prescribes the period for filing an appeal before the Tribunal. Section 112(6), however, expressly empowers the Tribunal to admit an appeal within the further period prescribed therein where it is satisfied that there was sufficient cause for not presenting the appeal within the period specified in sub-section (1).

DISCUSSION AND FINDINGS

24. The Hon'ble High Court's order dated 02.04.2025 granted liberty to pursue the statutory appeal subject to statutory deposit and decision according to law. It neither waived Section 112(8) nor enlarged this Tribunal's jurisdiction.

25. The memorandum had been physically presented earlier, but complete compliance with Section 112(8)(a) occurred only after the respondent's further objection on 22.09.2026. The additional challan is dated 23.09.2026 and FORM GST DRC-03/DRC-03A dated 24.09.2026 records further tax of ₹31,420, interest ₹48,644 and penalty ₹3,142. Applying *Lalta Prasad Khinni Lal (supra)*, we treat 24.09.2026 as the date on which the appeal became de jure duly filed. This neither waives the payment condition nor allows Registry registration to override the statute.

26. By Notification S.O. 3502(E) dated 30.06.2026, issued under Section 112(1) of the Act, the Government notified 31.07.2026 as the last date for filing appeals before the Tribunal in respect of orders communicated before 01.05.2026. The ordinary period for filing the present appeal accordingly expired on 31.07.2026. The appeal became duly filed in law on 24.09.2026, upon completion of the required payment, 55 days after that deadline. It therefore falls within the further three-month period under Section 112(6), subject to sufficient cause being shown for the delay

27. We have considered cause shown for the resulting delay. The appellant had already invoked the appellate remedy and made the prescribed statutory pre-deposit. The deficiency pertained to the admitted tax liability of ₹1,98,620 disclosed in FORM GST APL-05, comprising ₹8,573 towards ITC mismatch and ₹1,90,047 towards the net reconciled difference between FORM GSTR-1 and FORM GSTR-3B. When the respondent raised the objection regarding non-payment, the appellant, at the hearing on 08.09.2026, fairly acknowledged the deficiency and sought an opportunity to rectify it. The further tax payment of ₹31,420 made following the respondent’s objection on 22.09.2026 related to the component earlier adjusted against Cess credit rather than deposited under the appropriate CGST and SGST heads.

28. The appellant first paid the amount then identified as admitted on 14.09.2026 and, after the further objection on 22.09.2026, cured the remaining deficiency by 24.09.2026.

29. These circumstances must also be considered in the context of the procedural history. The appellant had approached the Hon’ble High Court when the Tribunal was not operational and obtained liberty to avail the statutory appellate remedy upon its constitution. The appellant thereafter duly pursued that remedy by presenting and prosecuting the present appeal. Thus, the default related to compliance with a mandatory statutory condition governing the filing of the appeal, rather than any failure to pursue the appellate remedy itself.

30. Mere inadvertence cannot justify dispensing with a mandatory statutory requirement. However, having regard to the appellant's prior pursuit of the appellate remedy, payment of the prescribed pre-deposit, candid acknowledgment of the deficiency and subsequent compliance within the time allowed by the Bench, we are satisfied that sufficient cause has been shown for condonation of the resulting delay under Section 112(6) of the Act.

31. The appeal is accordingly deemed to have been duly filed on 24.09.2026, when compliance with Section 112(8)(a) stood completed. The resulting delay is condoned in exercise of the power conferred by Section 112(6).

EFFECT OF DEFECT IN THE FIRST APPEAL

32. The objection is correct that the admitted amount was required to be discharged before filing the first appeal under Section 107(6)(a). The first Appellate Authority was, therefore, required to ensure compliance with that statutory condition before proceeding to consider the appeal.

33. It is equally necessary to distinguish an appeal suffering from a statutory defect from complete absence of an appellate proceeding. In *Mela Ram & Sons v. Commissioner of Income-tax, Punjab*, *AIR 1956 SC 367*, the Hon'ble Supreme Court approved the principle that an application invoking appellate jurisdiction does not cease to be an appeal merely because it is irregular or incompetent. It held, in the context of limitation, that an appeal presented out of time nevertheless remains an appeal and that an order dismissing it on that preliminary ground is an order passed in appeal.

34. The decision in *Mela Ram & Sons (supra)* did not concern the mandatory payment requirement under Section 107(6)(a) and cannot be construed as diluting that requirement. Its relevance in the present context is confined to the principle that a defect affecting the maintainability of an appeal does not necessarily render the appellate proceedings, or the order passed therein, non-existent or void *ab initio*.

35. In the present case, the competent first Appellate Authority passed a reasoned Order-in-Appeal dated 16.12.2024, rejecting the first appeal as barred by limitation. The said order continues to subsist. Neither Section 107(6) nor any binding judicial authority brought to our notice establishes that non-payment of the admitted liability, by itself, renders an Order-in-Appeal passed by the competent Appellate Authority non-existent or void *ab initio*.

36. It is also material that, despite having been permitted by order dated 31.07.2026 to file a reply and/or memorandum of cross-objections, the respondent filed only a reply. No memorandum of cross-objections under Section 112(5) has been filed seeking annulment or modification of the Order-in-Appeal on the ground of its alleged nullity. While the absence of cross-objections cannot confer validity upon an order that is otherwise a jurisdictional nullity, no such nullity has been established in the present case. Consequently, the respondent's preliminary objection to the maintainability of the present appeal cannot, by itself, furnish a basis for treating the subsisting Order-in-Appeal as non-existent.

37. The admitted liability having since been discharged, the deficiency giving rise to the objection stands cured. This, however, does not amount to retrospective condonation of the first Appellate Authority's failure to enforce the mandatory requirement under Section 107(6)(a). Nor does such earlier non-compliance, by itself, warrant treating the subsisting

Order-in-Appeal as a nullity so as to defeat the appellant's statutory remedy under Section 112 of the Act.

CONCLUSION

38. In view of the foregoing discussion, we hold that:

(i) payment in full of the admitted liability under Section 112(8)(a) is a mandatory condition for filing an appeal, which this Tribunal has no jurisdiction to waive;

(ii) the earlier presentation and registration of the memorandum of appeal did not constitute compliance with that statutory requirement;

(iii) applying the principle laid down by the Hon'ble Supreme Court in *Lalta Prasad Khinni Lal (supra)*, the appeal became duly filed in law on 24.09.2026, upon complete discharge of the admitted liability;

(iv) the resulting delay falls within the further period prescribed under Section 112(6), during which this Tribunal is empowered to admit an appeal upon sufficient cause being shown;

(v) having regard to the facts and circumstances recorded hereinabove, sufficient cause has been established for condonation of the resulting delay under Section 112(6); and

(vi) the earlier non-compliance with Section 107(6)(a), though contrary to a mandatory statutory requirement, has not been shown to render the subsisting Order-in-Appeal non-existent or void *ab initio*. No memorandum of cross-objections has been filed by the respondent seeking annulment or modification of that order on such ground.

ORDER

39. The appeal is held to have become duly filed in law on 24.09.2026, upon complete compliance with the mandatory requirement under Section 112(8)(a) of the CGST/SGST Act, 2017. The resulting delay in filing the appeal is accordingly condoned in exercise of the power conferred under Section 112(6) of the Act.

40. The preliminary objection raised by the respondent regarding non-payment of the admitted liability was well-founded when raised. However, the deficiency having subsequently been cured and the resulting delay having been condoned as aforesaid, the objection no longer survives. The appeal is accordingly held to be maintainable and shall proceed for consideration in accordance with law.

41. It is clarified that the findings recorded herein are confined to the question of maintainability of the present appeal and shall not be construed as an expression of opinion on its merits, including the challenge to the rejection of the first appeal on the ground of limitation or the underlying demand.

42. **List the appeal for final hearing on 17.12.2026**.

Pronounced in the open court on 09.10.2026.

(Pradeep Kumar Vyas) (Chandra Bhushan Singh)

Dated: 09.10.2026