IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL
KOLKATA BENCH

COURT NO.1

Appeal No. APL/69/KLK/2026

Aparnaa Fashions Fabrics
Through its proprietor
Shri Anil Kumar Khemka,
15/1A,Subh Apartments, Dr. U.N. Brahmachari Street,
Kolkata-700017, West Bengal

…… Appellant

VERSUS

1. The Deputy Commissioner of Revenue
   State Tax, Taltala Charge, 14, Beliaghata Road,
   Kolkata-700015

2. The Joint Commissioner of Revenue
   State Tax, Kolkata South Circle,
   14, Beliaghata Road, Kolkata-700015

…… Respondent/s

In appearance :

For the appellant : Ms. Priyanka Singh, Ld. Advocate
For the respondent : Ms. Baruna Dutta Choudhury, Sr. Jt. Commissioner, State GST

CORAM :

Hon'ble Shri S.G. Chattopadhyay : Judicial Member
Hon'ble Shri Anindya Mitra : Technical Member

Final Order

Date of Hearing : 08.10.2026
Date of Order : 15.10.2026

Per S.G. Chattopadhyay (JM):

[1]. In the instant appeal before us, the order impugned is dated 30.04.2025 passed by the first appellate authority further confirming the demand and asking the appellant-taxpayer to deposit GST @Rs.29,246/- each under CGST and SGST along with appliable interest and penalty.

[2]. Originally, the demand was created under Section 73, CGST Act, 2017 for short payment of GST pertaining to F.Y.2018-2019 and pursuant thereto SCN dated 21.11.2013 was issued asking the appellant-taxpayer to pay the tax along with applicable interest or to show cause as to why the same shall not be recovered from the taxpayer.

[3]. The adjudicating authority confirmed the demand in the Order in Original (in short 'OIO') dated 27.02.2024, which was challenged by the taxpayer before the first appellate authority. The first appellate authority decided the appeal by the impugned order dated 30.04.2025 viewing that the demand confirmed by the adjudicating authority in the OIO did not call for any interference in appeal. Hence, this appeal before us.

[4]. We have heard Ms. Priyanka Singh, ld. Advocate appearing for the appellant-taxpayer as well as Ms. Baruna Dutta Choudhury, Ld. Sr. Joint Commissioner, State GST.

[5]. Ms. Singh, ld. Advocate appearing on behalf of the appellant-taxpayer has contended that, insofar as the GST demand is concerned, the taxpayer has already paid the tax by filing appropriate return. According to Ms. Singh, learned counsel, penalty imposed on the taxpayer for such demand is absolutely arbitrary and illegal because mere failure to pay the tax within time does not, *ipso facto*, make the tax payer liable to penalty unless it is established that the taxpayer acted in conscious disregard of its obligations under the statute. To buttress her contention, ld. Counsel has relied on the decision of the Hon'ble Apex Court in the case of **M/s Hindustan Steel Ltd. Vs. State of Odisha, reported in AIR 1970 SC 253**

and referred to paragraph 7 of the judgment, in which the Hon'ble Apex Court has held as under :-

> ***7***. *Under the Act penalty may be im-posed for failure to register as a dealer: Section 9 (1) read with Section 25 (1) (a) of the Act. But the liability to pay penalty does not arise merely upon proof se of default in registering as a dealer. An Order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed of unless the party obliged either acted deliberately in defiance of law guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out.*

[6]. Ms. Baruna Dutta Choudhury, Sr. Joint Commissioner, State GST submitted that although the taxpayer has paid the tax dues, its liability for payment of interest and penalty is still alive. Ms. Dutta Choudhury contended that this is a statutory liability under the Act, which cannot be dispensed with.

[7]. We have examined the contention of Ld. Counsel of the appellant-taxpayer in the light of the judgment of the Hon'ble Apex Court in the case

of **M/s Hindustan Steel Ltd** (supra) and found that in the said case the designated Sales Tax Officer apart from taking other actions against the defaulter company under Orissa Sales Tax Act directed the company to pay tax due for 10 quarters ending December 31, 1958 and penalty in addition to such tax for failure to register itself as a dealer. The matter ultimately reached the Hon'ble Apex Court in appeal. One of the three issues in the appeal was whether the imposition of penalties for failure to register as a dealer was justified and during deliberation on the said issue the Hon'ble Apex Court made such observation in paragraph 7 which has been quoted hereinabove. The factual context in which the Hon'ble Apex Court decided **M/s Hindustan Steel Ltd.**(supra) is, thus, clearly distinguishable. In the present case, admittedly the appellant-taxpayer was liable to pay GST due to short payment for which proper demand was created which culminated into the SCN. The adjudicating authority as well as the first appellate authority concurred in attributing the tax liability to the taxpayer and since the taxpayer failed to discharge his strict statutory liability under the CGST & SGST Act, both of 2017, penalty and interest at the applicable rate was also imposed on him.

[8]. With due regards to the judgment of the Hon'ble Apex Court, cited to supra, we are of the view that the taxpayer cannot get rid of its strict statutory liabilities relying on the said judgment of the Hon'ble Supreme Court. Admittedly, the taxpayer has, by this time, made good the short payment of tax, though belatedly. Therefore, he is liable to pay interest for such delayed payment. Undisputedly, the appellant-taxpayer has failed to

pay the tax along with interest within 30 days of issue of the SCN and there is, therefore, no wrong in imposition of penalty in terms of sub-Section (9) to Section 73 of CGST Act and the corresponding provisions of SGST Act. Therefore, we find no reason to interfere with the order impugned passed by the first appellate authority. Resultantly, the appeal stands dismissed and disposed off.

Order is pronounced in open Court. The Registry is directed to communicate the order to the parties by providing certified copies of the order to both of them and upload the Final Order on the Portal immediately.

S.G.Chattopadhyay
Judicial Member

Anindya Mitra
Technical Member