GSTAT

State Bench Ghaziabad

Division Bench Court No. Court I

Filing No 2026109301001739

ASSISTANT COMMISSONER MS-4 GZB **.....Appellant**

Versus

J S VATS, FIRM ADVOCATE, NIL NIL NIL COLLEGE PARA DHUPGURI JALPAIGURI WEST BENGAL 735210 **.....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

On examining the case record, we find that the Assistant Commissioner, State Tax, Mobile Squad Unit 4, Ghaziabad, has filed a second appeal before this Tribunal. The appeal challenges Order No. 29 dated 28 June 2023, by which the first appellate authority cancelled the penalty imposed on M/s Maa Gauri Traders and directed that the amount deposited be refunded or adjusted. The vehicle, No. PB23T-2401, was carrying supari. It was stopped at T.P. Nagar, Ghaziabad, at about 10:35 p.m. on 4 May 2022. The driver produced Tax Invoice No. 04 and e-way bill No. 871223940550. The value shown in the invoice is Rs. 57,08,010. By Order No. 29 dated 28 June 2023, the first appellate authority allowed the appeal, set aside the Mobile Squad order and

directed that the deposited penalty of Rs. 5,33,620 be refunded or adjusted according to the rules.

We heard the learned Authorised Representative and examined the appeal memorandum, the order under challenge and the material on record. Admission of an appeal is not a formality. Before considering the merits, the Tribunal must first decide whether the appeal can be admitted and whether it meets the legal conditions. Filing an appeal does not by itself give the appellant a right to a hearing on the merits. The right to appeal is created by statute and must be exercised in accordance with the conditions set by law. In this regard, we refer to the decision of the Hon'ble Supreme Court in

Ganga Bai v. Vijay Kumar, (1974) 2 SCC 393:

2.1. *" **15.** The main controversy before us centres round the question whether that appeal was maintainable. On this question the position seems to us well established. There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."*

In Anant Mills Co. Ltd. v. State of Gujarat, (1975) 2 SCC 175,

the Hon'ble Supreme Court gave the same direction. It held:

We are therefore of the considered view that admission of an appeal is not a formality. It is an important legal question that must be decided at the admission stage. The Tribunal cannot first decide the merits and only afterwards examine whether the appeal met the conditions for admission. That approach would be neither legally sound nor logical.

3. **The question at the admission stage**

Since this is admittedly a departmental appeal, the first question is whether the Department has followed the statutory and administrative conditions that apply to such appeals. The fact that the Department is aggrieved by the order does not, by itself, answer that question.

We first consider Section 120 of the Uttar Pradesh Goods and Services Tax Act, 2017, titled "Appeal not to be filed in certain cases". Section 120(1) provides: (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." Under this provision, the Commissioner, State Tax, Uttar Pradesh, issued Circular No. 2425008 dated 05.07.2024. The circular sets a monetary limit of Rs. 20,00,000 for departmental appeals before GSTAT, subject to stated exceptions. The purpose is to reduce government litigation and use judicial resources properly.

The State continued this litigation policy through Circular No. 252/2026-27/State Tax dated 22.05.2026. That circular deals with monetary limits, review of departmental appeals and litigation before GSTAT and the

higher constitutional courts. The monetary-limit policy has therefore not been withdrawn or abandoned.

4. **Issues for determination**

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

Is the disputed amount, calculated as required by the circular, below that limit?

If it is below the limit, has the Revenue specifically stated and proved that a recognised exception applies?

Is it enough to say that the Commissioner approved or authorised the appeal to establish an exception?

Does filing and pursuing the appeal without proving an exception breach the binding litigation policy?

What is the result of this failure at the admission stage?

Can the appeal be admitted and heard on its merits?

5. **Method for Calculation of the disputed amount**

The circular sets out the following method for applying the monetary limit:

If tax is disputed, with or without interest or penalty, only the total disputed tax is counted. This includes CGST, SGST or UTGST, IGST and Compensation Cess.

If only interest is disputed, the disputed interest is counted.

If only penalty is disputed, the disputed penalty is counted.

If only late fee is disputed, the disputed late fee is counted.

If interest, penalty or late fee is disputed, but no tax is disputed, their total disputed amount is counted.

If an erroneous refund is disputed, the disputed refund amount is counted, including the relevant tax and Compensation Cess.

The limit applies to the disputed amount in the appeal or application being filed.

If one combined order decides more than one appeal or demand notice, the relevant amounts are added together. The limit is not applied separately to each appeal or demand notice.

Therefore, where the demand includes tax, interest and penalty, the disputed tax and cess are counted for this purpose. Interest and penalty are not added. If this amount is below Rs. 20,00,000, the monetary restriction applies unless a recognised exception is proved. On examining the record, we find that the disputed amount in this case is a penalty of Rs. 5,33,620, which is clearly below Rs. 20,00,000. The monetary limit therefore applies to this appeal.

6. **Exceptions to the monetary limit**

An amount below the monetary limit does not end the enquiry. Clause 4 of the circular allows the Department to pursue an appeal, regardless of the monetary limit, in the following cases:

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

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

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.

The case concerns valuation, classification, refunds, place of supply or another recurring issue, or an issue that requires interpretation of an Act, Rule, notification, circular, order or instruction.

A court has made strictures or adverse comments, or imposed costs, against the Government, the Department or its officers.

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

7. **Burden of establishing an exception**

An exception cannot be assumed simply because the Department wants to pursue an appeal. The party relying on an exception must prove that it applies. Once it is shown that the disputed amount is below Rs. 20,00,000, the Revenue must identify the exception, state the supporting facts and show the legal or administrative basis for relying on it. If the Revenue relies on the Commissioner's 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 this power in this particular case. These matters cannot be left to assumption. A bare statement that the Commissioner permitted the appeal is not enough.

8. **Authorisation and compliance with the monetary limit**

Approval to file an appeal and compliance with the conditions for that appeal are different matters. Authorisation to file does not, by itself, prove that an exception to the monetary limit applies. 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." This provision requires the Commissioner to examine the record, form an opinion about the legality or propriety of the order and identify the points to be raised before the

Tribunal. The record must allow the Tribunal to examine the basis for that decision. A bare statement that the Commissioner granted permission is not enough.

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)." An application authorised under Section 112(3) is therefore dealt with as an appeal under the Act. That authorisation does not remove the need to follow Section 120 or the monetary-limit instructions issued under it. If the Department relies on the exception allowing the Commissioner to contest a matter in the interest of justice or revenue, the record must show that the Commissioner considered this particular case and decided that it should be contested despite the monetary limit. The reasons for that decision must be clear. General approval is not enough. Otherwise, routine authorisation could allow every appeal below the limit to proceed and defeat the policy.

9. **Continuing litigation policy of Uttar Pradesh**

Circular No. 252/2026-27/State Tax dated 22.05.2026 provides for review by Zonal Law Committees and continues the policy of limiting departmental litigation by monetary thresholds, subject to stated exceptions. The Department must follow this policy consistently. It cannot treat the policy as binding when it helps the Department and optional when it restricts an appeal. The State is expected to conduct litigation responsibly and in line with its declared policy.

In Director of Income Tax v. S.R.M.B. Dairy Farming (P) Ltd.,

the Hon'ble Supreme Court recognised the need to reduce unnecessary government litigation and repeated proceedings at different levels of judicial review.

10. **Binding effect of departmental circulars**

The Department cannot rely on a statutory mechanism for controlling litigation when it is convenient and disregard it only because an order has gone against it.

In Ranadey Micronutrients v. Collector of Central Excise, (1996) 10 SCC 387,

the Supreme Court stressed the need for consistency and discipline in following departmental circulars. It held that the Revenue could not reject a Board circular merely by saying that it was inconsistent with a statutory provision. These principles, applied under similar revenue laws, also support the view that instructions issued by the competent revenue authority to regulate departmental appeals bind departmental officers.

11. **The right of appeal and the conditions governing it**

The Revenue may argue that Section 112 gives it a statutory right to appeal and that an appeal directed by the Commissioner must be admitted. We cannot accept this as an absolute rule. Section 112 must be read with the provisions governing departmental litigation, including Section 120. As explained in *Ganga Bai* and *Anant Mills*, the right of appeal is created by statute and may be subject to conditions. The existence of appellate jurisdiction does not require the Tribunal to admit every departmental appeal without checking whether those conditions have been met.

12. **Whether an exception is established in this case**

We have examined the record and Form GST APL-07. The Revenue states that this appeal has been filed under Section 112(3) of the UPGST Act. However, it has neither specifically relied on nor proved 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. The Revenue has also not shown that the case raises a recurring question of law requiring an authoritative decision, that adverse comments or costs were imposed against the Department, or that the Commissioner recorded the required opinion to contest this particular case in the interest of justice or revenue despite the monetary limit. We therefore find that the Revenue has not proved that any exception applies.

13. **Effect of the monetary limit on pending matters**

The right of appeal must be exercised within the statutory framework.

In State of Maharashtra v. Greatship (India) Ltd.,

the Hon'ble Supreme Court again stated that an appeal is created by statute. The Department's right is therefore subject to the conditions and rules in the statutory scheme.

In Commissioner of Commercial Tax v. Vikram Cement,

decided on 5 February 2026, the Hon'ble Supreme Court considered the GST monetary limit of Rs. 20 lakh and held that the circular also applied to pending appeals. It dismissed appeals involving a tax amount below the prescribed limit, while leaving the legal issue open for a suitable case.

In Director of Income Tax v. S.R.M.B. Dairy Farming (P) Ltd.,

the Supreme Court observed that repeated government litigation adds to the number of pending cases. It referred to the National Litigation Policy and the need to obtain decisions on meaningful issues, instead of pursuing several levels of review without sufficient reason.

In Commissioner of Customs, New Delhi v. Balaji Overseas,

the Supreme Court also disposed of appeals because the tax effect was below the applicable monetary limit. The disputed amount in those appeals was Rs. 1,28,73,481.

Tax law is part of public law. The State has wide powers to collect tax, but it must exercise those powers according to law. The same rule applies when the State files appeals. An appeal is not an unrestricted way to challenge every order that goes against the Department. The amount involved, the legal importance of the issue, public interest,

litigation costs and the need for an authoritative decision must all be considered. The Rs. 20 lakh limit does not mean that a smaller demand has no legal importance. It reflects the policy that, as a rule, public resources should not be spent on departmental appeals below that amount unless a stated exception applies.

14. **Maintainability must be examined before the merits**

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

15. **Public interest and responsible litigation**

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 when the amount involved, legal importance, recurring nature of the issue, public interest or a recognised exception justifies it. The statutory scheme also ensures that the Revenue is not treated as having accepted a disputed legal position merely because it did not file an appeal under the monetary-limit policy. Sections 120(2) and 120(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." "(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." 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)."

16. **Findings**

This is a departmental appeal and is governed by the monetary-limit policy for departmental litigation. The disputed amount is a penalty of Rs. 5,33,620, which is below Rs. 20,00,000. The Revenue has not proved that any recognised exception applies. The record does not show that the Commissioner specifically exercised the residual power, for reasons relating to this case, to bring the appeal within an exception. A mere statement that the Commissioner approved or authorised the appeal cannot replace compliance with the statutory provisions and binding litigation policy. This appeal therefore cannot be admitted for decision on the merits.

Order

For the reasons given above, we hold that this departmental appeal concerns a disputed penalty of Rs. 5,33,620, which is below the prescribed monetary limit of Rs. 20,00,000. The Revenue has not proved that any recognised exception applies. The appeal therefore does not meet the conditions for admission and maintainability before this Tribunal. Accordingly, we dismiss the appeal at the threshold because it is below the prescribed monetary limit and the Revenue has not proved that an exception applies.

We make it clear that we have not examined or decided the merits of the tax dispute. Nothing in this order should be understood as approving or rejecting the correctness of the order under challenge on its merits. This dismissal is limited to the maintainability of the departmental appeal under the applicable monetary-limit policy.

The appeal is disposed of accordingly. The Registrar shall provide a copy of this order to the appellant.

Pronounced in open Tribunal proceedings.

(Dr. Sanjay Kumar Chandhariyavi)

(Sungita Sharma)

Dated: 13.10.2026