GSTAT

State Bench Ghaziabad

Division Bench Court No. Court I

Filing No 2026109301001689

KRISHNA MURARI MISHRA **.....Appellant**

Versus

SHREE KRISHANA RECYCLING INDIA PRIVATE LIMITED, DIRECTOR, STREET NO. 2 BHUPENDRA PURI MODINAGAR UPGZB 201204 **.....Respondent**

Quorum

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

Counsel for Appellant **Counsel for Respondent**

ORDER

Shree Krishna

1. **Preliminary**

The case record shows that the vehicle of M/s Shree Krishna Recycling was stopped during routine patrolling and road checking. The driver produced a tax invoice and an e-way bill. The Department alleges that its examination of the documents and physical verification showed that the actual loading and movement of the goods differed materially from the details declared in the documents. According to the Department, the driver stated on oath at the spot that the goods were being moved from a different, undeclared location, rather than the registered premises shown in the e-way bill. The Department alleges that the documents were being used to cover unaccounted goods from another godown. MOV-07 was issued on 15.05.2024, and the proper officer imposed a penalty of Rs. 12,44,984 under Section 129(1)(a). The Department asks the Tribunal to set aside the first appellate order passed in Appeal No. GST/0363/2024, restore the original order and confirm the penalty of Rs. 12,44,984.

2. We heard the learned Authorised Representative and examined the appeal memorandum, the challenged order and the material on record. Admission of an appeal is not a mere formality. Before examining the merits, the Tribunal must be satisfied that the appeal is maintainable and meets the conditions for admission. Filing an appeal does not automatically give the appellant a right to a hearing on merits. The right of appeal comes from the statute and must be exercised according to the

conditions laid down by law.

In Ganga Bai v. Vijay Kumar, (1974) 2 SCC 393, the Hon'ble Supreme Court explained the difference between a suit and an appeal. A civil suit can ordinarily be filed unless the law bars it. An appeal, however, can be filed only when the statute provides for it.

In Anant Mills Company Ltd. v. State of Gujarat, (1975) 2 SCC 175, the Hon'ble Supreme Court recognised that the legislature may impose conditions on the right of appeal. However, those conditions must not be so burdensome that the right becomes practically meaningless.

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

It is admitted that this is a departmental appeal. The first question is therefore whether the Department has met the statutory and administrative conditions for filing it. Merely being dissatisfied with the challenged order does not answer this 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: (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. It fixes a limit of Rs. 20,00,000 for departmental appeals before GSTAT, subject to specified exceptions. The purpose is to reduce government litigation and make proper use of judicial resources.

The State continued its litigation-management policy through Circular No. 252/2026-27/State Tax dated 22.05.2026. This circular concerns monetary limits, review of departmental appeals and litigation before GSTAT and the higher constitutional courts. The monetary-limit policy therefore cannot be treated as having been abandoned.

4. **Issues for determination**

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

(ii) Is the disputed amount below that limit when calculated according to the circular?

(iii) If so, has the Revenue clearly pleaded and proved a recognised exception?

(iv) Is it enough to state that the Commissioner has approved or authorised the appeal?

(v) Does filing and pursuing the appeal without establishing an exception breach the binding litigation policy?

(vi) What is the effect of this failure at the admission stage?

(vii) Can the appeal be admitted and heard on merits?

5. **Calculation of the disputed amount**

The circular lays down the following method for applying the monetary limit:

(i) Where tax is disputed, whether or not interest or penalty is also disputed, only the total disputed tax is considered. This includes CGST, SGST or UTGST, IGST and Compensation Cess.

(ii) Where only interest is disputed, the disputed interest is considered.

(iii) Where only penalty is disputed, the disputed penalty is considered.

(iv) Where only late fee is disputed, the disputed late fee is considered.

(v) Where interest, penalty and/or late fee are disputed, but no tax is disputed, their total disputed amount is considered.

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

(vii) The limit applies to the disputed amount for which the appeal or application is proposed.

(viii) Where one 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.

Thus, where a demand includes tax, interest and penalty, only the disputed tax and cess are considered for this purpose. Interest and penalty are not added. If the amount calculated in this way is below Rs. 20,00,000, the monetary restriction applies unless a recognised exception is established. In this case, the disputed demand is a penalty of Rs. 12,44,984 under Section 129(1)(a), which is below Rs. 20,00,000. We therefore find that the monetary restriction applies to this appeal.

6. **Exceptions to the monetary limit**

The enquiry does not end merely because the amount is below the monetary limit. Clause 4 of the circular allows departmental litigation, regardless of the amount, in the following cases:

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

(ii) A rule or regulation made under any of those Acts has been held to go beyond the powers given by the parent Act.

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

(iv) The case concerns valuation, classification, refunds, place of supply or another issue that recurs and/or requires interpretation of the Act, Rules, notification, circular, order or instruction.

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

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

7. **Burden of establishing an exception**

An exception cannot be assumed merely because the Department wants to pursue an appeal. The party relying on an exception must show that it applies. Once the disputed amount is found to be below Rs. 20,00,000, the Revenue must identify the exception, explain the supporting facts and show the statutory or administrative basis for relying on it. If the Revenue relies on the Commissioner's residual power to contest a case in the interest of justice or revenue, it must produce the order or recorded opinion showing that this power was exercised in that particular case. These requirements cannot be met by assumption. Merely stating that the Commissioner has permitted the appeal is not enough.

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

Permission to file an appeal and compliance with the conditions for that appeal are separate matters. Authorisation alone does not establish an exception to the monetary limit. 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." The Commissioner must examine the record, form an opinion on whether the order is legal and proper, and identify the points to be placed before the Tribunal. The record must allow the Tribunal to examine the basis of this decision. Merely stating that the Commissioner has given 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 treated as an appeal under the Act. This authorisation does not remove the need to comply with Section 120 or the monetary-limit instructions issued under it. If the residual exception is relied on, 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 clear. General approval is not enough. Otherwise, every appeal below the limit could proceed on routine authorisation, defeating the policy.

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

Circular No. 252/2026-27/State Tax dated 22.05.2026 provides for review through Zonal Law Committees. It continues the policy of restricting departmental litigation by monetary limits, subject to specified 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 must 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 Supreme Court recognised the need to reduce unnecessary government litigation and repeated proceedings through different levels of judicial scrutiny.

10. **Binding effect of departmental circulars**

The Department cannot use a statutory mechanism for controlling litigation when it is convenient and ignore 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 need for consistency and discipline in following departmental circulars. It held that the Revenue could not reject the Board's circular on the ground that it was inconsistent with a statutory provision.

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

11. **The right of appeal and its conditions**

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 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 comes from the statute and may be subject to conditions. The Tribunal's power to hear appeals does not require it 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 appellant states that the appeal has been filed under Section 112(3) of the UPGST Act. However, the Revenue has neither clearly pleaded nor established any recognised exception to the monetary limit. No material shows 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 this case raises a recurring question of law requiring an authoritative decision, 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.

13. **Effect of the monetary limit**

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

In State of Maharashtra v. Greatship (India) Ltd., the Hon'ble Supreme Court repeated that an appeal is a creation of statute.

The Department's right is therefore 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 Hon'ble Supreme Court considered the Rs. 20 lakh GST monetary limit and held that the circular also applied to pending appeals. Appeals involving a tax component below the prescribed limit were dismissed. The legal question was left 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. Referring to the National Litigation Policy, it stressed the need to obtain decisions on meaningful issues instead of pursuing repeated 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 because of their low tax effect, having regard to 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 taxes, but it must exercise those powers according to law. The same applies when the State goes to court. An appeal is not an unrestricted means of challenging every adverse order. The amount involved, the legal importance of the issue, the public interest, the cost of litigation 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 public resources should ordinarily be saved by avoiding departmental appeals below that amount, unless a specified exception applies.

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

The Revenue has asked us to examine the merits of the dispute. We decline to do so because maintainability must be decided first. The Tribunal cannot decide the merits and then examine whether the appeal met the conditions for admission. Even an arguable case on 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 up the time of officers and taxpayers and the Tribunal's limited capacity. The monetary-limit policy seeks to ensure that the State litigates only where the amount involved, the legal importance, the recurring issue, the public interest or a recognised exception justifies it. The statutory scheme also protects the Revenue from being treated as having accepted a disputed legal position merely because it does not file an appeal under this 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." "(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**

(i) This is a departmental appeal governed by the monetary-limit policy for departmental litigation. The disputed demand is a penalty of Rs. 12,44,984 under Section 129(1)(a), which is below Rs. 20,00,000. The Revenue has failed to establish any recognised exception. No material shows that the Commissioner specifically exercised the residual power on reasons relating to this case to bring the appeal within an exception. Merely stating that the Commissioner has approved or authorised the appeal does not meet the statutory requirements or the binding litigation policy. This appeal therefore cannot be admitted for a decision on merits.

Order

17. For the reasons given above, we hold that this departmental appeal concerns a disputed penalty of Rs. 12,44,984 under Section 129(1)(a), 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 for admission and maintainability before this Tribunal. Accordingly, the appeal is dismissed at the threshold because the disputed amount is below the prescribed monetary limit and the Revenue has failed to establish an applicable exception.

We have neither examined nor decided the merits of the tax dispute. This order does not approve or reject the correctness of the challenged order on merits. The 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 supply a copy of this order to the appellant.

Pronounced during open Tribunal proceedings.

(Dr. Sanjay Kumar Chandhariyavi)

(Sungita Sharma)

Dated: 15.10.2026