GSTAT

Court No. Court I

APL/623/HYD/2026

REDDY VEERANNA CONSTRUCTIONS PVT. LTD ....**Appellant**

Versus

APPEAL I COMMISSIONER, APPEAL I COMMISSIONER, APPEAL I COMMISSIONER & ORS. ....**Respondent**

Counsel for Appellant
INPERSON
MUKTINUTALAPATI RAMACHANDRA MURTHY

Counsel for Respondent

Hon'ble Sushil Kumar Sharma, Member(Judicial)
Hon'ble Duvvuri Krishna Srinivas, Member (Technical)

ORDER

1. The appeal came up for consideration on the question of admission.

2. The Registry has issued a notice to the Appellant for rectification of certain defects and pointed out that they have not made statutory pre-deposit.

3. We heard the Ld. Counsel for the Appellant.

4. Briefly, the facts are that the Appellant was served with Show Cause Notice for proposing penalties under Section 122 of CGST Act, 2017,alleging that Appellant has raised fake invoices without supply of goods or services. The Adjudicating Authority has levied the penalties under Section 122 read with Section 20 of IGST Act and also under Section 125 read with Section 20 of IGST Act. The Appellant had preferred an appeal to the learned First Appellate Authority against the said order. The Ld. First Appellate Authority has dismissed their appeal upholding the original Adjudication Order. Against this Appellate Order, the Appellants have preferred the present appeal.

5. The questions before us, are whether the Appellant has rectified the defects pointed out by the Registry, whether the statutory pre-deposit is required to be paid for admission of this appeal.

6. The Ld. Counsel for the Appellant submits that with regard to the Defect Memo, listing five defects, satisfactory replies were given with regard to the bookmarking, correct indexing, uploading of show cause notice / statements with certifications and copies of appeal and relevant documents. With regard to pre-deposit under Section 112 (8) of CGST Act, he submitted that the present demand is related to only penalty **on order impugned is issued prior to 01.10.2025** and, as such, the requirement of pre-deposit under the said Section does not arise. Further, he has submitted that a detailed reply was submitted on 28.04.2026 bringing out the details of amendment to Section112 (8) which was made effective from 01.10.2025. He relied upon the following judgements.

- Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh (1953) 4 STC 114 (SC)
- Barjinder Singh Kohli v. Assistant Commissioner & Others (Judgment dated 03.11.2025, 2025 Taxo.online 2833)
- Anukul Bindal v. Union of India (Writ Tax No.2096 of 2026)
- Life Line Aqua of Andhra Pradesh Sales Tax Appellate Tribunal

7. He also brought to our notice that right to file an appeal is a substantive and vested right and requested to admit the appeal without insisting on pre-deposit. The Ld. Counsel further contended that same issue was before the Hon'ble High Court of Calcutta in Barjinder Singh Kohli Vs. The Assistant Commissioner of Revenue and Others dated 03.11.2025 (2025 Taxo.online 2833) observed as under wherein Hon'ble High Court has held that :

"It is evident from the above that there was no requirement for making any pre-deposit in cases where the appeal was carried against an order pertaining only to penalty and there being no amount of tax in dispute".

"It is well settled that right to prefer appeal is a substantive right. It is equally settled that when a statute provides for a right to prefer appeal, it can also limit or restrict such right by imposing appropriate conditions. Requirement of pre-deposit for filing appeal under Section 107 (6) of the 2017 Act is one such condition. The opening words of Section 107(6) of the 2017 Act 'No appeal shall be filed…….' Indicate that the condition of pre-deposit is attached to the filing of

the appeal. It is a precondition for filing the appeal. A provision containing such condition would be in the nature of a substantive provision and not merely procedural. When there was no provision for making any pre-deposit in respect of an appeal against an order demanding penalty or interest the petitioner could not have been asked to put in any pre-deposit where the order impugned by him only involved demand of penalty and interest. Non-existent conditions affecting substantive rights of appeal cannot be imported into statute. The appellate authority has, therefore, fallen in error in rejecting the petitioner's appeal on such ground."

The aforesaid decision is directly on point and squarely applicable to the facts of the present case and no pre-deposit can be insisted upon in a penalty-only matter, where the lis commenced prior to 01.10.2025. The Court has further held that the amendments introduced by the Finance Act, 2025 is prospective in nature and cannot be applied to the proceedings initiated before its coming into force and that non-existent statutory conditions effecting substantive right to appeal cannot be imported into the statute by any authority. Further, the Counsel has relied upon the decision of Hon'ble Supreme Court Judgement in case of Hoosein Kasam Dada (India) Ltd. Vs. State of Madhya Pradesh and Others on 23.02.1953 (4STC114) The brief case law is as under :

" The right of appeal was treated as a substantive vested right that accrued when assessment proceedings commenced before the First Instance Authority. A later amendment requiring proof of payment of assessed taxes as a condition for the admission of the appeal could not curtail the right, unless the retrospective application was clearly expressed or necessarily implied. Because of the amended proviso created the substantial additional burden, it was held inapplicable to pending proceedings, and the appeal had to be admitted without insisting for proof of payment of assessed taxes".

8. The learned Counsel prayed that appeal be admitted without making any further pre-deposit.

9. The departmental representative on enquiry by the Bench has stated that, they don't have any objection to decide the pre-deposit matter on merits.

10. We have perused the matter on the issue of statutory pre-deposit, quantum of pre-deposit to be made while preferring appeal before First Appellate Authority and the Appellate Tribunal is prescribed under sub-section (6) of Section 107 and sub-section (8) of Section 112 of the Act respectively.

The relevant extract of the Section 112 (8) is reproduced below:

" (8) No appeal shall be filed under sub-section (1), unless the appellant has paid-

- in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
- a sum equal to [*ten per cent*] of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order [subject to a maximum of [*twenty crore rupees*],] in relation to which the appeal has been filed:

* **[Provided** *that in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equal to ten percent of the said penalty, in addition to the amount payable under the proviso to sub-section (6) of section 107 has been paid by the appellant.* **] "**

***** inserted by the Finance Act, 2025 w.e.f. 01.10.2025

10. The Section 112 of the Act envisages payment of full amount of admitted tax, interest, fine, fee and penalty, and 10% of remaining amount of tax in dispute as pre-deposit while preferring the appeal before the Tribunal. This amount is in addition to the pre-deposit already made under the Section 107 of the Act. Further, it was observed that proviso to Section 112(8) was effective from 01.10.2025 vide Finance Act, 2025 (Act No. 7 of 2025) dated 29.03.2025, wherein pre-deposit was prescribed in cases where issue involved is only the penalty. In the present case, it was observed that show cause notice was issued on 29.09.2022, Order in Original was issued on 28.08.2023 and impugned order (OIA) was issued on 12.01.2024. From this, it can be seen that the impugned order was issued very much before the amendment became effective i.e. 01.10.2025. We find that the requirement of pre-deposit, in cases before the amendment became effective, was decided by the Hon’ble Calcutta High Court in the above referred case, squarely applies to the present case of pre-deposit as contested by the Appellant.

Further, it was observed that the amendment bringing into effect the proviso to Section 112 (8) did not indicate any retrospective application or necessary implication.

Hence, we are inclined to hold that no pre-deposit is required to be made under Section 112 of the Act in the present appeal.

It is made clear that this order shall not prejudice the merits of the case. At the time of final hearing, while deciding the appeal on merits, if the Tribunal comes to the conclusion that the appellant was required to make a pre-deposit a sum equal to ten percent of the said penalty amount under section 112(8) of C.G. S.T.Act, the appellant shall be bound to comply with the direction of the bench.

We order accordingly.

Issue notice to the respondents. List it after four weeks.

(Sushil Kumar Sharma)

(Duvvuri Krishna Srinivas)

Dated: 28.07.2026