IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17603 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
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MANJULABEN VINOD PATEL
Versus
THE DEPUTY COMMISSIONER OF STATE TAX & ANR.

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Appearance:
MR DARSHAN B GANDHI(9771) for the Petitioner(s) No. 1
MS POOJA ASHAR, AGP for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 17/04/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)

1 Heard learned advocate Mr.Darshan Gandhi appearing for the petitioner and learned Assistant Government Pleader Ms.Pooja Ashar for the respondents.

2 Since short issue is involved, with consent of learned advocates for the respective parties, the matter is taken upfor final hearing and final disposal today.

3 ***Rule*** returnable forthwith. Ms.Pooja Ashar, learned AGP waives service of rule on behalf of the respondents.

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4 By way of present writ petition, the petitioner assails the order passed under Section 73 of the Central / State Goods and Service Tax Act, 2017 (hereinafter referred to as "the Act" for short), as well as the Appellate Order dated 29.08.2025 passed in Form GST APL-02 under Section 107 of the Act by respondent No.1 (hereinafter referred to as "the respondent" for short), rejecting the statutory appeal as time barred and the petitioner has further sought for the direction to the respondent authority to *de novo* adjudicate the proceedings for the Assessment Year 2019-20.

5 The brief facts leading to filing of the present writ petition are as under:

5.1 The petitioner is a proprietorship firm engaged in the business of manufacturing wooden doors, wooden windows, wooden frames etc., and has obtained its registration on 06.07.2018 under the provisions of the Act.

5.2 The respondent initiated proceedings under Section 73 of the Act by issuing and intimation of discrepancies in Form GST DRC-01A with respect to the Financial Year 2019-20 alleging that the Input Tax Credit (for short "ITC") claimed by the petitioner did not match with the ITC in GSTR-2A.

5.3 Subsequent to the petitioner's reply, the respondent issued a show-cause notice in Form GST DRC -01 on 29.05.2024 proposing the demand of Rs.10,51,322/- as tax, interest and penalty for the excess claim of ITC. In response

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to the show-cause notice, the petitioner filed a detailed reply in Form GST DRC-06 on 29.06.2024. However, the Adjudicating Authority passed the Assessment Order under the provisions of Section 73(9) of the Act on 30.08.2024 in Form GST DRC-07.

5.4 Being aggrieved by the order dated 30.08.2024 passed under Section 73(9) of the Act, the petitioner preferred an appeal under Section 107 of the Act by filing Form GST APL-01 on 28.12.2024. The petitioner also filed an application for condonation of delay explaining the delay of approximately 25 days that occurred in filing of the statutory appeal. The Appellate Authority, by way of impugned order dated 29.08.2025 dismissed the appeal on the ground of limitation and also holding that the appeal has been filed beyond the prescribed period of three months under Section 107(1) of the Act and further observed that the reason for delay given by the petitioner that he was not able to decide as to whether or not to take the benefit of the GST Amnesty Scheme or file an appeal was not properly explained by the petitioner and in wake of such observations, the Appellate Authority rejected the appeal of the petitioner on the ground of limitation which has now culminated into filing of the present writ petition.

6 Mr.Darshan Gandhi learned advocate appearing for the petitioner, has submitted while placing reliance on a judgement in the case of *Alkem Laboratories Ltd vs. Union of India (2021) 124 taxmann.com 480 (Guj.),* learned advocate Mr.Gandhi, submitted that it is categorically held in the said

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judgement that any adverse order passed without granting an opportunity of hearing to the petitioner as mandated under Section 75(4) of the Act, would violate the principles of natural justice thereby requiring setting aside of the impugned order. In the instant case, the petitioner was denied the statutory right of personal hearing and hence the impugned order deserves to be quashed solely on this ground.

6.1 It was submitted by Mr.Gandhi, that the Appellate Authority has mechanically rejected the appeal as time-barred, ignoring the short delay of 25 days which occurred due to assessment of the impact of newly introduced Section 128A of the Act and amendments to Section 16(5) and 16(6) of the Act. Placing reliance on judgement of Madras High Court in the case of *A.J.Textiles vs. Deputy State Tax Officer, (2024) 163 taxmann.com 781.* It was submitted that where delay extends beyond the condonable period, the Appellate Authority must consider the appeal on merits where the delay is short and justice so demands. In the instant case, the delay is shorter i.e. of 25 days only which is fully explained, bona fide and not intentional, and therefore the Appellate Order deserves to be quashed.

6.2 It was further submitted by learned advocate Mr.Gandhi, relying on the additional affidavit that the Order-in-Original was passed on 30.08.2024 and in terms of Section 107(1) of the CGST Act, 2017, the statutory appeal was required to be filed within three months i.e. on or before 30.11.2024 with a further one month condonable period available under Section

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107(4) of the Act. However, immediately after the passing of the impugned order, the Finance Act, 2024 introduced Section 128A providing a statutory scheme for waiver of interest and penalty in respect of demands pertaining to Financial Year (for short 'F.Y') 2017-18, 2018-19 and 2019-20. Thereafter, the Central Government, vide Notification No. 17/2024-Central Tax dated 27.09.2024, brought into force the relevant provisions of the Finance Act, and vide Notification No. 20/2024-Central Tax dated 08.10.2024. inserted Rule 164, prescribing detailed conditions and procedures, including the mandatory filing of prescribed electronic forms on the GST portal, with effect from 01.11.2024.

6.3 It was further submitted that although the statutory scheme became operational from 01.11.2024, the GST Network, by its Advisory dated 08.11.2024, clarified that the mandatory electronic forms FORM GST SPL-01 and FORM GST SPL-02 were under development and would be made available only from the first week of January 2025 rendering the scheme practically non-implementable during the entire initial limitation period of three months Simultaneously, by the same Notification No. 17/2024, Central Tax dated 27.09.2024, Sections 16(5) and 16(6) of the Act were brought into force retrospectively extending the time-limit for availment of Input Tax Credit for FY 2017-18 to 2020-21.

6.4 It was further submitted by Mr.Gandhi, learned advocate, that in view of these overlapping statutory changes, procedural uncertainty and portal non-operability, the

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petitioner was compelled to undertake a bona fide and careful legal evaluation as to whether it would be more appropriate to avail the newly introduced statutory waiver scheme under Section 128A of the Act or to pursue the statutory appeal remedy

6.5 Learned advocate Mr.Gandhi, further submitted that as the prescribed forms continued to remain unavailable on the portal even beyond the expiry of the initial three-month period, and in order to avoid forfeiture of the statutory right of appeal, the petitioner ultimately filed an appeal on 28.12.2024, i.e. within the one-month condonable period as envisaged under Section 107(4) of the Act. Thereafter, the GST Network issued further advisories in late December 2024 and January 2025 confirming phased availability of the prescribed forms, thereby validating the petitioner's bona fide wait during the initial period.

6.6 Mr.Gandhi, learned advocate also submitted that the resultant delay of 25 days beyond the initial three months was thus occasioned solely due to subsequent statutory amendments, procedural developments and portal constraints and that the delay was neither deliberate nor negligent, and thus the delay falls within the condonable jurisdiction under Section 107(4) of the Act.

7 In wake of such submissions, Mr.Darshan Gandhi, learned advocate for the petitioner, has requested to grant the prayers as prayed for in the present writ petition.

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8 Per Contra, learned Assistant Government Pleader Ms.Pooja Ashar has contended that the appeal is filed within the period of 120 days but beyond a period of 90 days, wherein, the discretion of the Appellate Authority was there to condone the delay. It was further submitted that the indecisiveness of the petitioner in filing a statutory appeal should not be a ground to condone the delay. Therefore, the Appellate Authority has rightly rejected the appeal on the ground of limitation.

9 We have heard the learned advocates appearing for the respective parties at length and perused the material on record.

9.1 It appears that there is a delay of 25 days over and above the period of 90 days in preferring the appeal filed by the present petitioner in assailing the order dated 30.08.2024 raising the tax demand along with interest and penalty. The petitioner preferred an appeal on 28.12.2024 by filing Form GST APL-01.

9.2 It is the case of the petitioner that subsequent to the order passed under Section 73(9) of the Act, the Finance Act, 2024 provided statutory scheme for waiver of interest and penalty in respect of demands pertaining to the Financial Year 2017-18, 2018-19 and 2019-20. The present controversy was with regard to the Financial Year 2018-19. It was sought to be demonstrated that due to overlapping statutory changes and procedural uncertainty and portal constraints, there was a

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genuine indecisiveness by the present petitioner to avail the benefit of newly introduced statutory scheme or to pursue the statutory remedy.

9.3 Therefore, when the discretion was there with the Appellate Authority to condone the delay if it was satisfactorily explained, this Court has no hesitation in observing that the reason envisaged by the petitioner for delay of 25 days over and above 90 days is properly explained.

9.4 Section 107 (4) of the Act confers discretion to the Appellate Authority, to allow additional one month in case he/she is satisfied that the appellant was prevented by "sufficient cause" from presenting the appeal The statute, thus provides additional one month to file the appeal, and all the reasons satisfying the expression "sufficient cause" can be raised by the appellant, and the appellant authority is required to apply its mind on the reasons assigned for belatedly filing the appeal i.e beyond the period of 90 days. In case, the appellate authority is of the opinion that the delay is appropriately explained, and the appellant has carved out "sufficient cause", the appellate authority is authorized and empowered to condone the delay and the appeal/application cannot be rejected on the ground of lack of authority. The aforementioned reason assigned by the petitioner in his application satisfies the expression "sufficient cause". We are of the opinion that the appellate authorities should have applied the mind to the reasons assigned for delay, as it had the discretion to condone the delay within the period of 90

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days over and above 30 days, if the appeal is filed within additional 30 days. Hence, the present writ petition deserves to be allowed.

FINAL ORDER

10 Hence, the matter is remanded back to the appellate authorities for fresh consideration of appeal on merits. The order rejecting the appeal of the petitioner on the ground of limitation is quashed and set aside with direction to the Appellate Authority to decide the appeal on merits.

However, we clarify that the petitioner shall fully co-operate with the proceedings before the appellate authorities and shall also remain present as and when intimated. In case, the petitioner fails to co-operate with the appellate authority, it will be open for the appellate authority to pass appropriate orders in accordance with law. Rule is made absolute. No order as to costs.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI,J)

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