PURTI PRASAD PARAB
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3598 OF 2026

BA Continuum India Pvt. Ltd.
5th, 6th, 7th and 11th Floor, Wing A & B,
Prism Tower, Malad West, Mumbai,
Mumbai Suburban, Maharashtra – 400 072. … Petitioner

Versus

1. State of Maharashtra
through the Secretary to the Government,
Revenue Department, Mantralaya,
Mumbai – 400 032, Maharashtra.

2. The Commissioner of State Tax,
Maharashtra, Goods and Services Tax
Department, GST Bhavan, Mazgaon,
Mumbai – 400 010.

3. The Deputy Commissioner of
State Tax, Malad West 502, Maharashtra,
5th Floor, GST Bhavan, Mazgaon,
Mumbai – 400 010. ... Respondents

Mr. Prasad Paranjape a/w Ms. Bhavya Varma i/b Lumiere Law Partners for the Petitioner.
Mr. Himanshu Takke, AGP for the Respondents – State.

CORAM : M. S. KARNIK AND
SANDESH D. PATIL, JJ.
DATED : 31st AUGUST, 2026.

ORAL ORDER : (PER M.S. KARNIK, J.)

1. Heard learned Counsel for the Petitioner. The Application for refund was made by the Petitioner before the original Authority. The Application was rejected. After that an Appeal came to be filed before the

Appellate Authority. The Petitioner did not remain present and therefore in view of the following discussion and conclusion which is reproduced hereinbelow, the Appeal was rejected.

> *Discussion and Conclusion :*
>
> *On bare perusal of the facts involved in the case it is seen that, despite issuing hearing notices on three occasions and giving substantial time, appellant failed to appear and substantiate his grounds of appeal. Non-attendance and negligence on the part of appellant shows that he is not interested in pursing his appeal.*
>
> *In view of the above, I am constrained to conclude that, no purpose will be served by keeping the present appeal pending and giving appellant any further opportunity of hearing. Therefore, considering the fact of non-attendance and non-compliance it is decided to reject the appeal filed by the appellant.*
>
> *In view of the above, I proceed to pass the order as follows.*
>
> *ORDER*
>
> *The appeal petition bearing ARN : AD2705220183187 against refund order No.ZD270122039328K Dt. 14/01/2022 is decided on merit and appeal filed by the appellant is dismissed/rejected for non-attendance and non-compliance.*
>
> *The demand order passed by the proper office is hereby confirmed in appeal. The proper officer hereby directed to proceed as per provision of law.*

2. Learned Counsel for the Petitioner submitted that it was a genuine mistake on the part of the Petitioner in not remaining present for the hearing and they should have remained present before the Appellate Authority. It is further submitted that in any case under the provisions of Section 107(11) and (12) of the Central Goods and Services Tax Act, 2017

("***the CGST Act***") the Appeal should have been decided on merits. Section 107(11) and (12) of the CGST Act reads thus :

> *Section 107 (11) : The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the Adjudicating Authority that passed the said decision or order:*
>
> ***Provided*** *that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:*
>
> ***Provided*** *further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under Section 73 or Section 74.*
>
> *Section 107 (12) : The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.*

3. Learned AGP while opposing the Petition submitted that since the Petitioner did not present himself, the Appellate Authority had no option but to dismiss the Appeal as it is obvious that the Petitioner was not

interested in prosecuting the case. Learned AGP supported the impugned order.

4. We are of the opinion that the impugned order calls for interference. Reliance is placed by learned Counsel for the Petitioner in case of ***Arval India Private Ltd. vs. Union of India and Others***[1] decided by the High Court of Punjab and Haryana vide judgment dated 25th September, 2025 in support. The relevant portion of the judgment dated 25th September, 2025 decided in ***Arval India Private Ltd. vs. Union of India and Others*** reads thus :-

> *5. Issue raised for adjudication in this writ petition is as to whether appellate authority has jurisdiction to dismiss an appeal filed under Section 107 of CGST/HGST Act, in default and for non-prosecution. At this juncture, it is useful to refer to judgment of Hon'ble the Supreme Court in Balaji Steel Re-rolling Mill's case (supra), wherein question for consideration was as to whether "Customs, Excise and Service Tax Appellate Tribunal had the power to dismiss the appeal for want of prosecution or not". Hon'ble the Supreme Court after referring to Section 35-C of Central Excise Act, 1944 as well as Rule 20 of the Customs Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982, held that the Tribunal did not have any power to dismiss the appeal in default or for want of prosecution in case, appellant was not present/not represented when appeal is taken up for hearing. Section 107(11) of CGST Act is indeed analogous with Section 35-C of Central Excise Act. Section 35-C and Section 107(11) of CGST Act read as under:-*

1 CWP No.24183 of 2025

35-C. Orders of Appellate Tribunal.-	*Section 107. Appeals to Appellate Authority-*
(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.	*(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:* *Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.* *Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed*

	unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under Section 73 or Section 74.

6. Division Bench of Patna High Court in Purshottam Store's case (supra) held that Appellate Authority is statutorily obliged to dispose of an appeal on merits as this is the specific mandate under Section 107 CGST Act Co-ordinate Bench of this Court in M/s Parle Biscuits Pvt. Ltd. Rudrapur, Uttrakhand vs. State of Haryana and others, 2024-VIL-1330-P&H, Neutral Citation: 2024: PHHC: 158627-DB, has also held that it is binding upon Appellate Authority to have examined the case on merits rather than dismiss it for non-prosecution.

7. A bare reading of Section 107 makes it apparent that Appellate Authority is enjoined upon, after making such further inquiry as may be necessary, to pass an order as it may think just and proper, either confirming, modifying or annulling the decision or order appealed against. Therefore, dismissal of appeal for non-prosecution is not an option available on non-appearance of appellant. In the given factual matrix, order dated 28.10.2024 is not sustainable.

8. Keeping in view the facts and circumstances as above, order dated 08.03.2025 (Annexure P-1) is set aside and matter remitted/remanded to Appellate Authority, to decide the same on merits in accordance with law. It is agreed that parties shall appear before Appellate Authority on 18.10.2025.

5. It is very significant to refer to the decision of the Hon'ble Supreme Court in ***ASP Traders vs. State of Uttar Pradesh and Ors.***[2]**,** the relevant portion reads thus :-

> *32. The principles of natural justice mandate that when a taxpayer submits a response to a show-cause notice, the adjudicating authority is required to consider such response and render a reasoned, speaking order. This is not a mere procedural formality, but a substantive safeguard ensuring fairness in quasi-judicial proceedings. The right to appeal under Section 107 of the CGST Act, 2017, is predicated upon the existence of a formal adjudication. An appeal can lie only against an 'order', and in the absence of a reasoned order passed under Section 129(3) of the Act, the taxpayer is effectively deprived of the statutory remedy of appeal. Such a deprivation undermines the foundational principles of fairness, due process, and access to justice, rendering the right of appeal illusory or nugatory. It is now settled law that failure to issue a speaking order in response to a show-cause notice creates a legal vacuum. Any consequential action including imposition of tax or penalty, would then be unsupported by authority of law, thereby potentially violating Article 265 of the Constitution of India, which prohibits the levy or collection of tax except by authority of law.*

6. We are in respectful agreement with the view taken by their Lordships in ***Arval India Private Ltd. vs. Union of India and Others*** (supra). By the impugned order, the Appeal was dismissed for non prosecution in view of the absence of the Petitioner, when the provision required the Appeal to be decided on merits in accordance with law. Moreover, the impugned order is not a reasoned order.

2 (2026) 2 SCC 641

7. The present Petition is therefore allowed. The impugned order is quashed and set aside. The Appeal is remanded to the Appellate Authority. The Appellate Authority to hear the Appeal of the Petitioner on its own merits and in accordance with law.

8. Learned Counsel for the Petitioner submits that the Petitioner shall remain present before the Appellate Authority on 8th September, 2026 at 11.00 a.m. and shall co-operate with the Appellate Authority. After the Petitioner appears it is open for the Appellate Authority to fix the schedule of hearing as per its convenience. All contentions on merits are kept open.

9. The Writ Petition stands disposed of.

(SANDESH D. PATIL, J.) (M. S. KARNIK, J.)