2026:AHC:153047

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 3087 of 2026

M/S Priya Medical Stores

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Pooja Talwar
Counsel for Respondent(s)	:	C.S.C.

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Heard Ms. Pooja Talwar, learned counsel for the petitioner and Sri Ravi Shanker Pandey, learned Standing Counsel, who appears for State-respondents.

2. A joint statement has been made by the learned counsel for the parties that they are well conversant with the instructions and they are in a position to argue the matter and they do not propose to file any affidavit.

3. With the consent of the parties, the petition is being decided at the first stage.

4. The case of the writ petitioner is that it happens to be a registered dealer under UPGST/ CGST Act, 2017 having a valid GSTIN No. 09AFJPG1884Q1ZP. The respondent no. 2, Deputy Commissioner, Commercial Tax, Sector 26, Kanpur noticing the discrepancy found in Form 26-AS as compared to GSTIN report issued a show cause noticed dated 31.01.2024 referable to the financial year 2018-19 under Section 73 (1) of the Act while imposing tax interest in penalty. Since the writ petitioner was not aware about the said proceedings, however, the respondent no. 2 proceeded to pass the order dated 27.04.2024. The petitioner questioned the said order while filing Writ Tax No. 417 of 2026, in which on 21.01.2026, the following orders were passed:

> *"1. Heard learned counsel for the petitioner and learned Standing Counsel for the State respondents.*
> *2. Challenge has been raised to the ex parte Adjudication Order dated 27.04.2024 passed under Section 73 of the U.P.G.S.T. Act, 2017.*

3. Preliminary objection has been raised that the petitioner has alternative remedy of appeal.

4. On the issue of limitation, we have passed order dated 05.01.2026 in M/S Shree Shakti Infra Vs. State of U.P. & Anr., 2026:AHC:277-DB, following another order passed by us in M/S Bambino Agro Industries Ltd. Vs. State of Uttar Pradesh & Anr., 2025:AHC:229995-DB.

5. In view of the above, it appears, the petitioner has statutory remedy of appeal available to it. Leaving that course open, interference claimed is declined.

6. Accordingly, the present petition is disposed of."

5. Thereafter the petitioner herein preferred an appeal before the 3rd respondent, Additional Commissioner Grade-2 (Appeal)-VI State Tax, Kanpur seeking the ground of delay. However, the said appeal came to be rejected by the 3rd respondent by virtue of the order dated 17.04.2026.

6. Questioning both the orders, the present writ petition has been preferred.

7. Learned counsel for the petitioner has sought to argue that as per the instructions received from the client, she confines her challenge to the appellate order. Submission is that once grounds are taken for condonation of the delay while preferring the appeal, then the said grounds ought to have been considered but the same cannot be overlooked or brushed aside on the premise that the same is not acceptable to the adjudicating authority who is to decide the appeal. Submission is that it was not open for the appellate authority to ignore the grounds as there were genuine grounds which needed consideration at the end of the appellate authority which has not been done. Learned counsel for the petitioner as per the instruction from the client submits that the petitioner is also agreeable for the conditions which the Court may accord including deposit of the cost.

8. Learned Standing Counsel on the other hand submits that the grounds so taken in the memo of appeal are not worth consideration. However, on a pointed query being raised to him whether the said grounds were considered or not, the answer is in negative.

9. I have heard learned counsel for the parties and gone through the records carefully.

10. Plainly and simply, order under Section 73 of the Act came to be passed on 27.04.2024 against which an appeal came to be preferred along with the

grounds for delay which has been rejected on 17.04.2026. The grounds taken in the appeal for condonation of delay is being quoted hereinunder:

> *"4. That as per posting in GSTN portal the date is 27-04-2024. Accordingly the Appeal is due to be filed upto 26-07-2024. But Appeal could not be filed in due time. The delay caused in filing impugned Appeal due to following reasons:-*
>
> *i. As soon as the deponent came to know on 11-01-2026 from the GST department sources for determination of tax liability under Section 73 dated 27-04-2024, immediately consulted an Advocate for seeking legal remedies. Advocate advised to contact Advocate Pooja Talwar of High Court for filing Writ Petition before High Court of Judicature at Allahabad Lucknow.*
>
> *ii. The deponent consulted Smt. PoojaTalwar Advocate High Court for seeking remedies and filing Writ Petition. The Writ Petition drafted, compiled, prepared and filed on 14-01-2026. The Writ Petition is registered vide Writ Tax No. 417 of 2026. Hon'ble High Court made an Order that petitioner has statutory remedy of Appeal availability, interference claimed is denied.*
>
> *iii. From impugned Order the deponent consulted ShriSantosh Kumar Gupta, Advocate at Kanpur for further filing of Appeal before Additional Commissioner Grade-2 (Appeal)-6, State Tax, Kanpur on 19-02-2026.*
>
> *iv. Appeal drafted and prepared, Court Fee deposited and without any further delay Appeal is being filed before your honour."*

11. However, the appellate order dated 17.04.2026 passed by the 3rd respondent reads as under:

> **"जी०एस०टी० अधिनियम की धारा-107 के अंतर्गत प्रस्तुत अपील प्रार्थना पत्र पर आदेश**
>
> ***M/S PRIYA MEDICAL STORE***
> **पता - 128/*A/R/81, YASHODA NAGAR, KANPUR I***
> **जीएसटीएन - 09*AFJPG1884Q1ZP***
> **वर्ष - 2018-19**
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> पंजीकृत फर्म द्वारा जीएसटी पोर्टल पर *ARN - AD090226043499Q* दि0-21.02.2026 के माध्यम से ऑनलाईन *APL-01* दाखिल किया गया है, जिसमें उनके द्वारा राज्य कर अधिकारी, खण्ड-26 कानपुर द्वारा पारित आदेश धारा-73 के विरुद्ध अपील प्रस्तावित की गई।
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> जी०एस०टी० अधिनियम की धारा-107(1) के अंतर्गत एडजुडिकेटिंग अथॉरिटी के किसी

आदेश अथवा निर्णय के विरुद्ध तामीली के 03 माह के अंदर अपील दाखिल किये जाने का प्रावधान है। प्रश्नगत प्रकरण मे अपीलकर्ता द्वारा विवादित आदेश-दि०- 27.04.2024 के विरुद्ध अपील दि0-21.02.2026 को ऑनलाईन दाखिल की गयी है, जो कि उक्त समयावधि (तीन माह) की सीमा से विलंब से दाखिल है। विलम्ब के सम्बन्ध में अपीलकर्ता द्वारा प्रस्तुत तथ्यों को जीएसटी अधिनियम में वर्णित प्रावधानों के संदर्भ में मान्यता प्रदान नही की जा सकती है। उल्लेखनीय है कि अधिनियम की धारा-107(4) के अंतर्गत उक्त 03 माह की समय सीमा के बाद अधिकतम 01 माह का विलम्ब क्षमा किये जाने का अधिकार अपीलीय अधिकारी को प्राप्त है। परंतु प्रश्नगत प्रकरण में संपूर्ण माह की समय सीमा समाप्त हो गयी है, जिस कारण से जी०एस०टी० अधिनियम में निहित प्रावधानों के आलोक में प्रस्तुत प्रश्नगत अपील ग्राह्य नहीं है।

सीजीएसटी एक्ट/ यूपीजीएसटी एक्ट के विधिक प्राविधानों में *Limitation Act* लागू होने / प्रभावी होने की कोई व्यवस्था नहीं है, बल्कि विधिक प्रावधानों में ही अपील दायर करने की एक निश्चित समय सीमा निर्धारित प्रदान की गयी है। उसके विरुद्ध या निर्धारित समय से अधिक समय दिया जाना विधिक प्राविधानों के विपरीत है। इस संबंध में माननीय उच्च न्यायालय द्वारा सवश्री शांती ईंट उद्योग सुरिरकला तहसील मांट जिला- मथुरा बनाम स्टेट ऑफ यू०पी० रिट टैक्स सं0-1711/2018 आदेश दि० 18-01-2019 में स्पष्ट व्यवस्था दी गयी है- *Admittedly, the period of limitation to file a first appeal under section 107 of the U.P Goods and Services Tax Rules 2017 is three months and the period for which the delay may be condoned is thirty days from the expiry of normal period of limitation.*

Clearly, no application for condonation of delay may have been entertained by the appellate authority beyond a period of thirty days from the date of expiry of normal period of limitation (three months).

In the case of Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur reported in 2008(3) SCC 70 paragraph no. 8 as also the Full Bench decision of this court in Commissioner of Income Tax I; Commissioner of Income Tax Central; Janpad Thok Kendriya Upbhokta Sahkari Bhandar Limited Vs. Mohd. Farooq; New Cawnpore Floor Mills Pvt. Ltd; Commissioner of Income Tax reported in 2009(317) ITR 305, the delay condonation application filed beyond the period of thirty days could not be condoned and it was clearly not maintainable by the appellate authority. Consequently, there is no error in the order of the Appellate authority dismissing the appeal as time barred.

माननीय सर्वोच्च न्यायालय द्वारा सर्वश्री ए०एल०डी० ऑटोमोटिव प्रा०लि० बनाम कामर्शियल टैक्स कमिश्नर (2018) 38 वीएलजे 217 (*SC*) में स्पष्ट रुप से निर्णित किया गया है कि विधिक प्राविधानों के अंतर्गत दिये गये समय में कोई भी छूट दिया जाना विधिक प्राविधानों के विपरीत है।

Hon'ble Supreme Court has held- There is no power conferred on any

authority under the Act to dilute the mandatory requirement under Section 19(11). The Taxing Statute has to be strictly construed. Nothing is to be read in nothing is to be implied and language used in taxing statute had to be looked into fairly. The benefits envisaged in the taxing statute had to be extended as per restrictions and conditions envisaged there in. The statute having not given any indication for extension of time which is a condition for claiming Input Tax Credit, The submission that period could have been extended by assessing authority is unfounded and cannot be accepted.

अत: उक्त विधिक तथ्यों व विवेचन के आधार पर प्रश्नगत अपील समय के अंदर न होने के कारण ग्राह्य नहीं है तथा प्रस्तुत अपील प्रार्थनापत्र अस्वीकार किया जाता है।"

12. A conjoint reading of the grounds of the delay in preferring the appeal and the order of the appellate authority will show that none of the grounds have been considered and the order appears to have been passed in a cyclostyle manner.

13. Accordingly, bearing in mind that an appeal is a statutory right and grounds were taken in delay for condonation which has not been considered, thus, the appellate order cannot be sustained.

14. Accordingly, the petition is being decided in the following manner:

(a) The order dated 17.04.2026 passed by Additional Commissioner Grade-2 (Appeal)-VI, State Tax, Kanpur rejecting the delay condonation application in preferring the appeal and also the appeal itself is set asdie subject to payment of Rs. 5000 as cost.

(b) The delay condonation application accompanied with the appeal stands restored to its original number.

(c) The appellate authority shall decide the delay condonation application within a period of 2 months from the date of the production of the certified copy of the order.

(d) The respondent-State shall be entitled to the cost of Rs. 5,000/-.

15. Accordingly, the petition stands **partly allowed**.

July 24, 2026
Ashu

(Vikas Budhwar,J.)