NEUTRAL CITATION
2025:GUJHC:74185-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17382 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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HARSH DEEPK SHAH
Versus
UNION OF INDIA & ORS.

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Appearance:
MR ABHISHEK M MEHTA(3469) for the Petitioner(s) No. 1
MR PARTH MEHTA for MR ANKIT SHAH(6371) for the Respondent(s) No. 1,2,3
MR MAUNIL YAJNIK for the Respondent (s) No.

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

Date : 24/12/2025

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Heard learned advocate Mr. Abhishek Mehta for the petitioner and learned Senior Standing Counsel Mr. Maunil Yajnik and learned advocate Mr. Parth Mehta for learned Senior Standing Counsel Mr. Ankit Shah for the respective respondents.

2. Rule returnable forthwith. Learned Senior Standing Counsel waives service of notice of rule on behalf of the respective respondents. With the consent of the parties, the matter is taken up for hearing today itself.

3. By way of present writ petition, the petitioner has assailed the Order-in-Appeal dated 30.05.2025 as well as Order-in-Original dated

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24.04.2025.

4. The brief facts of the case are that the Order-in-Appeal dated 30.05.2025 passed by the respondent – Commissioner (Appeals) preferred by the petitioner challenging the Order-in-Appeal dated 24.04.2024 has been rejected on the ground that the same is not maintainable and time barred.

5. Learned advocate Mr. Abhishek Mehta appearing for the petitioner has submitted that there is a delay of six days in filing the appeal challenging the Order-in-Original dated 24.04.2024. It is submitted that under the provisions of Section 107 of the Goods and Services Tax Act, 2017 (hereinafter referred to as the "Act"), the appeal memo was uploaded online on 05.10.2024. However, the same has been rejected on the ground of delay. In support of his submissions, learned advocate Mr. Mehta has placed reliance on the decision of the Full Bench in the case of *Panoli Intermediate (India) Pvt. Ltd. v. Union of India & Ors.,* reported in *2015 (2) GLR 1395* and has submitted that this Court while exercising its powers under Article 226 can condone the delay. Apart from this submissions, learned advocate Mr. Mehta has submitted that the Order-in-Original is also required to be quashed and set aside on various grounds one of which is that the petitioner had already paid a cumulative GST amount totalling to sum of Rs.14,35,326/-. It is further submitted that after rejection of its GST number the petitioner had also deposited an amount of Rs.4,57,282/- at the time of filing the appeal. Learned advocate Mr. Mehta further undertakes to make payment of remaining GST liability amounting to Rs.85,316/-. Thus, it is submitted that the adjudicating authority has completely lost sight of the demand raised addition of Rs.1,98,80,000/-. Thus, it is urged that this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India and in light of the decision of the Full Bench of this Court in case of ***Panoli Intermediate (India) Pvt. Ltd. (supra)*** may set aside the orders passed by the appellate authority

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as well as Order-in-Original.

6. *Per contra*, learned Senior Standing Counsel Mr. Maunil Yajnik appearing for the respondents has submitted that the decision of the Full Bench of this Court is also considered by this Court in case of *Assistant Commissioner of (CT) LTU, Kakinada & Ors. vs. Glaxo Smith Kline Consumer Health Care Limited* *i(2020) 19 S.C.C. 681* and this Court has dealt with the similar issue in the case of *M/s. Tapi Ready Plast v. State of Gujarat & Ors. r*endered in *Special Civil Application No. 12047 of 2025* dated 27.11.2025.

7. We have heard the learned counsel for the respective parties at length. It is not in dispute that the petitioner has filed an appeal challenging the Order-in-Original dated 24.04.2024 belatedly over and above the period of limitation of 120 days. The petitioner had filed its appeal on 05.10.2024 after a delay of six days under the provision of Section 107 of the GST Act. The provisions of Section 107 under Chapter 18 of the GST Act stipulates filing of an appeal,which is as under :-

> *"**Section 107. Appeals to Appellate Authority.-***
>
> *(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.*
> *(2) xxx xxx*
> *(3) xxx xxx*
> *(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month."*

8. Thus, the maximum period of presenting the appeal against the Order-in-Original was 3 months and thereafter, if the Appellate Authority is of the opinion that the appellant was prevented by sufficient cause of presenting the appeal and the same can be allowed to be presented within further period of one month. Thus, the maximum period would be 120 days

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i.e. one month is only allowed if the Appellate Authority is satisfied that the appellant was presented by sufficient cause from presenting the appeal within a period of three months. Thus, at the first instant, the petitioner was required to file an appeal within a period of three months, and only if the Appellate Authority gets satisfied that the cause shown by the petitioner for non-filing of the appeal within a period of three months; the Appellate Authority has the power to give one month more to present the same.

8.1. In the present case, the petitioner has filed appeal after a period of 6 days which is over and above the aforesaid period. Thus, even if the Appellate Authority in its discretion had accepted the cause shown by the petitioner for belatedly filing the appeal, the Appellate Authority had the power to condone the delay for a period of one month and allow such appeal to be filed within period of limitation of one month only. Thus, the Appellate Authority has precisely held that it does not have the power to condone the delay in filing the appeal beyond the period of limitation of 120 days.

9. However, the issue which calls for deliberation as to whether this Court can set aside the order of the Appellate Authority and further direct the Appellate Authority to accept the appeal beyond the condonation period or not?

10. At this stage, we may refer to the observations of the Apex Court in the case of ***Glaxo Smith Kline Consumer Health Care Limited (supra)***. The Apex Court while examining the issue analogs to the issue of Sales Tax and VAT, Andhra Pradesh Value Added Tax Act, 2005 and provisions of Section 31 of the Limitation Act, 1963, which provides power of Appellate Authority to condone the delay and power of High Court under Article 226 of the Constitution of India has held that the Appellate Authority has no power to condone the delay, if an appeal is preferred

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after the aggregate period. However, it is held that though the powers of High Court under Article 226 of the Constitution of India are wide, but certainly not wider than the plenary powers bestowed on the Apex Court under Article 142 of the Constitution. It is held as under :-

> *"16. Indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on this Court under Article 142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties. Even while exercising that power, this Court is required to bear in mind the legislative intent and not to render the statutory provision otiose. In a recent decision of a three Judge Bench of this Court in Oil and Natural Gas Corporation Limited vs. Gujarat Energy Transmission Corporation Limited & Ors., the statutory appeal filed before this Court was barred by 71 days and the maximum time limit for condoning the delay in terms of Section 125 of the Electricity Act, 2003 was only 60 days. In other words, the appeal was presented beyond the condonable period of 60 days. As a result, this Court could not have condoned the delay of 71 days. Notably, while admitting the appeal, the Court had condoned the delay in filing the appeal. However, at the final hearing of the appeal, an objection regarding appeal being barred by limitation was allowed to be raised being a jurisdictional issue and while dealing with the said objection, the Court referred to the decisions in Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur & Ors., Commissioner of Customs and Central Excise vs. Hongo India Private Limited & Anr., Chhattisgarh State Electricity Board vs. Central Electricity Regulatory Commission & Ors. and Suryachakra Power Corporation Limited vs. Electricity Department represented by its Superintending Engineer, Port Blair & Ors. and concluded that Section 5 of the Limitation Act, 1963 cannot be invoked by the Court for maintaining an appeal beyond maximum prescribed period in Section 125 of the Electricity Act."*

11. Thus, the Apex Court in the case of ***Glaxo Smith Kline Consumer Health Care Limited (supra)*** has cautioned that the provisions of Section 5 of the Limitation Act, 1963 cannot be invoked by the Court (High Court) for maintaining an appeal beyond the maximum period provided in Section 125 of the Electricity Act, 2023, it has held as under :-

> *"15..... In the subsequent decision in Mafatlal Industries Ltd. v. Union of India, this Court went to observe that an Act cannot bar and curtail remedy under Article 226 or 32 of the Constitution. The Court, however added a word of caution and expounded that the Constitutional Court would certainly take note of the legislative intent*

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manifested in the provisions of the Act and would exercise its jurisdiction consistent with the provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution does not mean that it can disregard the substantive provisions of a statute and pas orders which can be *settled only through a mechanism prescribed by the statute."*

12. The Apex Court has also referred to the array of decisions dealing with provisions of Section 29 (2) of the Limitation Act, 1963 in case of Special Legislation. One of such which has been rendered in the said decision is in the case of ONGC vs. Gujarat Energy Transmission Corpn. Ltd. (*2017) 5 S.C.C. 42*, wherein it is held thus :-

"15. From the aforesaid decisions, it is clear as crystal that the Constitution Bench in Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409, has ruled that there is no conflict of opinion in Antulay case [A.R.Antulay v. R.S. Nayak, (1988) 2 SCC 602] or in Union Carbide Corpn. case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] with the principle set down in Prem Chand Garg v. Excise Commr., AIR 1963 SC 996. Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corpn. case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584]. As the pronouncement in Chhattisgarh SEB v. Central Electricity Regulatory Commission, (2010) 5 SCC 23, lays down quite clearly that the policy behind the Act emphasising on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution."

13. The Hon'ble Apex Court has further held in the case of ***Glaxo Smith Kline Consumer Health Care Limited (supra)*** *as under :-*

"19. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corporation of India Ltd. (supra), which had adopted the view taken by the Full Bench of the Gujarat

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High Court in Panoli Intermediate (India) Pvt. Ltd. vs. Union of India & Ors.19 and also of the Karnataka High Court in Phoenix Plasts Company vs. Commissioner of Central Excise (AppealI), Bangalore 20. The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 1995 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition 19 AIR 2015 Guj 97 20 2013 (298) ELT 481 (Kar.) 33 on the ground that the same is without jurisdiction or passed in excess of jurisdiction by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also nonsuit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner choses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act,the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three Judge Bench of this Court in Oil and Natural Gas Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.

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22. Suffice it to observe that this decision is on the facts of that case and cannot be cited as a precedent in support of an argument that the High Court is free to entertain the writ petition assailing the assessment order even if filed beyond the statutory period of maximum 60 days in filing appeal. The remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of Section 31 of the 2005 Act and is, therefore, not entertained, it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such."

14. Thus, the Apex Court has held that even if the writ petition is filed after the expiry of maximum prescribed period of limitation, though alternative efficacious remedy is available, the High Court cannot disregard the statutory period for redressal of the grievance and entertain

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the writ petition of such a party as a matter of course and doing so would be in teeth of principle of dictum underlying the dictum of three Judge's Bench of the Apex Court in case of *ONGC v. Gujarat Energy Transmission Corpn. Ltd. (*2017) 5 S.C.C. 42. The Apex Court has further held that, albeit, the High Court has wide powers, but the same does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the Andhra Pradesh Value Added Tax Act, 2005 and if the same is done, it would render the legislative scheme and intention behind the stated provision otiose. Thus, on the same principles as enunciated by the Apex Court, we are not inclined to set aside the order passed by the Appellate Authority and more particularly in wake of the lame excuse given by the petitioner for condoninig the delay such as the illness of the Accountant and closure of business.

15. We may also refer to the observations of the Apex Court in the case *M/s. Singh Enterprise v. Commissioner of Central Excise, Jamshedpur & Ors., rendered in Appeal (Civil) No. 5949 of 2007 decided on 14.12.2007* wherein the Apex Court on the same line has refused to accept the reason of belatedly filing of the appeal on the pretext of lack of experience and closure of business.

16. In view of the settled legal precedence, this Court cannot exercise its jurisdiction under Article 226 of the Constitution of India condoning the delay of six days. So far as the challenge of Order-in-Original is concerned, once the petitioner has availed its alternative efficacious remedy of filing the appeal, this Court cannot call back and examine the Order-in-Original. The petitioner had an opportunity to assail the same by filing the writ petition in case the Order-in-Original was in violation of the principles of natural justice or without jurisdiction. Having availed the remedy of filing an appeal as the petitioner was aware that none of the issues either with regard to violation of the principles of natural justice or lack of jurisdiction

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was involved and the issue was only confined with the facts that and the appropriate remedy was to file an appeal as provided under the statute, this Court cannot examine the validity or legality of the Order-in-Original.

17. Thus, the writ petition fails and the same is dismissed. Rule is discharged. No order as to costs.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI,J)

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