GAHC010085342026

2026:GAU-AS:9393

THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Writ Petition (C) no. 2332/2026

Debabrata Bhowmick, son of Late Dhiren Bhowmil, Resident of M. Azad Road, China Patty, Nagaon, Nagaon Padel, Pin-782003 in the District of Nagaon, Assam.

.....Petitioner

-VERSUS-

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi- 110001.
2. Office of the Commissioner [Appeals], CGST, Central Excise and Customs, CGST, Central Excise and Customs, GST Bhawan, Kedar Road, Machkhowa, Guwahati- 781001.
3. The Superintendent of CGST Nagaon, R.K. Road, Nagaon, Assam-782001.

.....Respondents

Advocates :

Petitioner : Mr. I. Bhuyan, Advocate

Respondent no. 1 : Mr. S. Katakey, Central Government Counsel [CGC]

Respondent nos. 2 & 3 : Mr. S.C. Keyal, Senior Counsel & Special Counsel, CGST
Mr. K. Jain, Advocate

Dates of Hearing : 03.06.2024 & 24.06.2026

Date on which judgment is reserved : NA

Date of pronouncement of Judgment : 24.06.2026

Whether the pronouncement is of the operative part of the judgment ? : No

Whether the full judgment has been pronounced ? : Yes

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER

1. In this writ petition preferred under Article 226 of the Constitution of India, assail is made to an Order-in-Appeal dated 19.02.2026 passed by the Commissioner [Appeals], CGST, Central Excise & Customs, Guwahati as the Appellate Authority [hereinafter referred to as 'the Appellate Authority', for short] in an appeal preferred under Section 107 of the Central Goods and Services Tax [CGST] Act, 2017. By the Order-in-Appeal, the Appellate Authority has rejected the appeal filed by the petitioner as the appellant on 23.05.2025 on the ground that the appeal was filed beyond a period of twenty-one days after expiry of normal

period of limitation of three months and the extended period of limitation of one month from the date of passing of the Order-in-Original on 03.01.2025.

2. Before going into the issues raised in this writ petition, it would be apposite to narrate the facts which have led the petitioner to prefer the present writ petition against the Order-in-Appeal dated 19.02.2026.

3. The petitioner is registered assessee under the CGST Act and on application, GST Registration Certificate bearing no. GSTIN 18AHPPB7409J1Z2 has been issued to him. The petitioner is the proprietor of M/s Harekrishna Drugs and he carries on his business under the said trade name with his principal place of business at M.D. Road, Nagaon, Pin – 782001, District – Nagaon, Assam.

4. The respondent no. 3 on scrutiny of the records regarding the petitioner's Input Tax Credit [ITC] had reason to believe that the petitioner contravened the provisions of Section 16 and Section 39 of the CGST Act read with the provisions of the Assam Goods and Services Tax [AGST] Act, 2017 and the Integrated Goods and Services Tax Act [IGST], 2017 and the rules framed thereunder, and he had made short payment of GST and availed excess ITC to the extent of Rs. 1,08,205.06 [= CGST Rs. 54,102.53 + SGST Rs. 54,102.53] during the Tax Period – Financial Year [F.Y.] : 2020-2021. With such reason to believe the petitioner was served a Notice dated 24.10.2024 in Form ASMT-10 asking him to explain the reasons for such discrepancies within the time period mentioned therein. It was further mentioned that in the event of non-receipt of explanation, within the given time period, it would be presumed that the petitioner had nothing to say in the matter and the proceedings in accordance with law would be initiated against him.

5. As no reply was receive from the petitioner in response to the Notice dated 24.10.2024, the petitioner was served a Notice under sub-section [5] of Section 73 of the CGST Act on 29.10.2024 by the Proper Officer asking him to pay an

amount of Rs. 2,01,246/- which included the demanded amount *plus* interest and penalty towards excess availment of ITC. The petitioner was asked to pay the amount on or before 13.11.2024 failing which Show Cause Notice would be issued under sub-section [1] of Section 73 of the CGST Act.

6. Thereafter on 22.11.2024, the Proper Officer issued a Show Cause Notice under sub-section [1] of Section 73 of the CGST Act to the petitioner stating inter alia that on scrutiny of the petitioner's Returns, it appeared that the petitioner availed excess ITC amounting to Rs. 1,08,205.06 [= CGST Rs. 54,102.53 + SGST Rs. 54,102.53]. Mentioning that in reference to the discrepancies indicated the Notice in Form ASMT-10 and the subsequent Notice dated 29.10.2024 no Reply was received from the petitioner, the petitioner was called upon to show cause within a period of thirty days from the date of service of the Show Cause Notice as to why the following amounts should not be realized from him :-

[i] Excess availed ITC amounting to Rs. 1,08,205.06 [CGST Rs. 54,102.53 and SGST Rs. 54,102.53].

[ii] Interest on Rs. 1,08,205.06 @ 18% per annum from the succeeding day of the due date of payment to till actual date of payment.

[iii] Penalty under Section 73[9] of the CGST Act read with relevant provisions of AGST Act 2017 and IGST Act, as amended, for wrongly availing and utilizing ITC.

Along with the Show Cause Notice dated 22.11.2024, a Summary of Show Cause Notice in Form GST DRC-01 was also uploaded in the common portal on 23.11.2024.

7. On receiving the Show Cause Notice, the petitioner, on 18.12.2024, filed a Reply wherein it was stated that an amount of Rs. 13,44,030.43 was claimed for the period – F.Y. : 2020-2021 as ITC but ITC auto-drafted in GSTR-2A showed the figure as Rs. 12,89,927.90. Therefore, the differences of ITC claimed was shown

as Rs. 1,08,206/-. The petitioner claimed that the said figure was shown due to non-submission of GST by the supplier within the due date. The petitioner claimed that the ITC was shown in the next Financial Year. The petitioner for the purpose of clarification, also submitted a copy of GSTR-2B for the month of April, 2021 along with the Reply to contend that the amount of such difference of the ITC had remained unclaimed till date. With such contentions, the petitioner submitted that the records would reveal that there was no intention on the part of the petitioner to claim excess ITC and the same was merely a procedural error.

8. After submission of the Reply to the Show Cause Notice, the respondent no. 3 as the Adjudicating Authority passed the Order-in-Original on 03.01.2025. After going through the Show Cause Notice and the Reply to the Show Cause Notice; various GST Returns submitted by the petitioner; and other relied upon documents like electronic credit ledger account, ITC accumulation statement GSTR-2A of 2020-2021; monthly returns of GSTR-3B of 2020-2021; etc., the Adjudicating Authority passed the Order-in-Original stating in the following manner :-

> On scrutiny it appears that :-
>
> [i] Whereas GSTR-2A of 2020-2021 shows that taxpayer received total ITC of Rs. 25,97,113/- [IGST Rs. 0/-, CGST Rs. 12,98,557/-, SGST Rs. 12,98,557/-]
>
> [ii] GSTR 3B for F.Y. : 2020-2021 shows that the taxpayer utilized ITC for payment of Tax for F.Y. : 2020-2021 for an amount of Rs. 26,88,060.86 [IGST Rs. 0/-, CGST Rs. 13,44,030.43, SGST Rs. 13,44,030.43].
>
> [iii] The net impact of the above facts is summarized in tabular form in is as below :-

Description		IGST	CGST	SGST	Total
A.	Total ITC accumulation due to receipt of ITC from various suppliers during 2020-2021 as per GSTR-2A	0	Rs. 12,98,557/-	Rs. 12,98,557/-	Rs. 25,97,113/-
B.	ITC utilization for discharge of taxes during F.Y. : 2020-2021 in GSTR-3B	0	Rs. 13,44,060.43	Rs. 13,44,060.43	Rs. 26,88,060.86
D [i.e. B-A]	Excess availed ITC during F.Y. : 2020-2021	0	Rs. 45,473.43	Rs. 45,473.43	Rs. 90,947.86

It is clear from the above table the taxpayer availed excess ITC amounting to Rs. 90,948/- [IGST Rs. 0/-, CGST Rs. 45,474/-, SGST Rs. 45,474/-]. Therefore, taxpayer contention is pursuant to above Show Cause Notice is not acceptable.

Having regard to the above discussion and findings recorded in the above paragraph, I therefore proceed to pass the following orders :-

ORDER

1. I confirm the demand & order for recovery of excess availed ITC amounting to Rs. 90,948/- [IGST Rs. 0/-, CGST Rs. 45,474/-, SGST Rs. 45,474/-] only u/s 73 of the CGST Act, 2017, read with relevant provisions of Assam GST Act and IGST Act, 2017.

2. I impose penalty amounting to Rs. 20,000/- [IGST Rs. 0/-, CGST Rs. 10,000/-, SGST Rs. 10,000/-] u/s 73 of the CGST Act, 2017, read with relevant provisions of Assam GST Act and IGST Act, 2017.

> 3. I confirm the proposal for realization of interest on the confirmed amount at point no. 1 at the applicable rate in terms of sub-section [1] of Section 73 read with Section 50 of the CGST Act, 2017 read with relevant provisions of Assam GST Act and IGST Act, 2017.

9. On receipt of the Order-in-Original on 03.01.2025, the petitioner submitted an application for Rectification in terms of the provisions of Section 161 of the CGST Act before the Adjudicating Authority on 08.03.2025. In the Rectification Application, the petitioner projected that ITC amounting to Rs. 90,947/- was disallowed on the ground that it was an excess claim in GSTR-3B. Contending that the grounds specified in the Order-in-Original for disallowing the ITC were misplaced and the input of the ITC should be allowed, the petitioner sought for rectification of the Order-in-Original. However, the respondent no. 3 as the Adjudicating Authority on 24.04.2025, rejected the petitioner's Rectification Application on the ground that the reason cited in the application was not found satisfactory.

10. It was after rejection of the Rectification Application on 24.04.2025, the petitioner filed the Appeal before the Appellate Authority in Form GST APL-01 under Section 107 of the CGST Act on 23.05.2025 against the Order-in-Original dated 03.01.2025 and also, the Order dated 24.05.2025. In the Appeal, the petitioner as the appellant mentioned the grounds for which the Order-in-Original and the Order passed on the Rectification Application were to be held unsustainable in law. But, the Appellate Authority has dismissed the Appeal by the Order-in-Appeal dated 19.02.2026, impugned herein.

11. The Appellate Authority has observed that as the Order-in-Original was passed on 03.01.2025, the normal period of limitation for filing an appeal under Section 107, CGST Act was available up to 02.04.2025 without condonation of delay. If delay period was to be condoned under Section 107[4] of the CGST Act, the appeal ought to have been preferred within the extended period of one month,

that is, on or before 02.05.2025. As the appeal was preferred by the petitioner on 23.05.2025 which was beyond twenty-one days after expiry of the period of four months, the appeal was found to have been presented beyond the period of four months. The appeal was, therefore, rejected as time-barred, by the Appellate Authority under Section 107[11] of the CGST Act by the impugned Order-in-Appeal dated 19.02.2026.

12. I have heard Mr. I. Bhuyan, learned counsel for the petitioner; and Mr. S.C. Keyal, learned Senior Counsel & Special Counsel, CGST assisted by Mr. K. Jain, learned counsel for the respondent nos. 2 & 3. I have also heard Mr. S. Katakey, learned Central Government Counsel [CGC] for the respondent no. 1.

13. Mr. Bhuyan, learned counsel for the petitioner has submitted that after the Order-in-Original was passed on 03.01.2025, the petitioner submitted the Rectification Application within the prescribed three-months limitation period on 08.03.2025 as per the provisions of Section 161 of the CGST Act. It is his contention that the ITC amounting Rs. 90,948/- was incorrectly disallowed and the petitioner was a bona fide purchaser. As the fault was attributable to a supplier for non-submission of GSTR-01 in time, the Adjudicating Authority ought to have examined the matter in the right perspective. He has contended that the Adjudicating Authority did not consider the explanation given by the petitioner. In the Rectification Order dated 24.04.2025, the Adjudicating Authority despite reaching a prima facie view that the supplier filed delayed returns, did not exercise the jurisdiction properly. It is, thus, evident that the Adjudication Authority rejected the Rectification Application without considering relevant factors. As the petitioner pursued the proceeding before the Adjudicating Authority in bona fide manner with due diligence, the Appellate Authority ought to have excluded the time period spent in the Rectification proceeding from the period of limitation while counting the limitation period of filing the appeal under Section 107 of the CGST Act. It is his submission that if the period spent during the Rectification proceeding is excluded, then the appeal was within the period of

limitation, which was condonable. In that event, the Appellate Authority in the absence of any application for condonation of delay, ought to have given an opportunity to the petitioner-appellant to show that there was sufficient cause which prevented him to file the appeal within the normal period of limitation.

14. Mr. Keyal, learned Senior Counsel & Special Counsel, CGST appearing for the respondent CGST authorities has submitted that since the CGST Act is a special enactment and a specific period of limitation is provided for filing an appeal under Section 107 of the CGST from an Order-in-Original, the provisions of the Limitation Act, 1963 are not applicable. As per sub-section [1] of Section 107 of the CGST Act, the appeal is to be preferred normally within a period of three months from the date on which the appealable order is communicated. Sub-section [4] of Section 107 has provided discretion to the Appellate Authority to allow presentation of an appeal within a further period of one month, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months. If an appeal is presented beyond a period of four months, the Appellate Authority has no discretion to condone any period of delay beyond a period of four months and as such, the Appellate Authority was right in holding that the appeal filed by the petitioner on 23.05.2025 was after twenty-one days from expiry of four months from 03.01.2025 and has correctly referred to the decisions of **Singh Enterprise vs. Commissioner of Central Excise, Jamshedpur, [2008] 3 SCC 70**; and **Assistant Commissioner [CT] LTU, Kakinada vs. Glaxo Smith Kline Consumer Health Care Limited, [2020] 19 SCC 681.** He has further submitted that an appeal under Section 112 of the CGST Act lies against the Order-in-Original dated 03.01.2025 before the Appellate Tribunal and therefore, the writ petition is not entertainable.

15. I have given consideration to the submissions of the learned counsel for the parties; and have also gone through the materials brought on record apart from the provisions of the CGST Act, and the decisions cited at the Bar by the learned

counsel for the parties, which would be discussed in the later part of this Order at appropriate places.

16. As the core issue is in relation to presentation of the appeal under Section 107 of the CGST Act within the period of limitation or not, it is apt to refer to the relevant provisions of Section 107 of the CGST Act at first, :-

> **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.
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> * * * * * * * * *
>
> [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.
>
> [5] Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.
>
> [6] No appeal shall be filed under sub-section [1], unless the appellant has paid –
>
> [a] 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
>
> [b] a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, subject to a

> maximum of twenty crore rupees, in relation to which the appeal has been filed.
>
> [7] Where the appellant has paid the amount under sub-section [6], the recovery proceedings for the balance amount shall be deemed to be stayed.
>
> [8] The Appellate Authority shall give an opportunity to the appellant of being heard.
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> * * * * * * * * *
>
> [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.

17. From the provisions of Section 107 of the CGST Act, it is evident that an appeal against a decision or order passed by an Adjudicating Authority under the CGST Act or the SGST Act or the IGST Act is to be filed before the Appellate Authority within a period of three months from the date on which the said decision or order is communicated to the affected person. The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of three months, allow it to be presented within a further period of one month. No such appeal shall be filed, unless the appellant has paid [a] 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 [b] a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order in relation to which the appeal has been filed. If the appellant makes such pre-deposit, the recovery proceedings for the balance amount shall be deemed to be stayed. The Appellate Authority is required to give an opportunity to the appellant of being heard.

18. A combined reading of sub-section [1] and sub-section [4] of Section 107 makes it clear that the appeal against a decision or order of the Adjudicating Authority is to be made within three months. The period can further be extended, on

sufficient cause being shown, by another period of one month ***but not beyond***. It goes to demonstrate that as far as an appeal against a decision or order of an Adjudicating Authority is concerned, the normal period of limitation prescribed is three months which can be extended by another one month, on sufficient cause being shown to the satisfaction of the Appellate Authority.

19. It is also relevant, at this stage, to refer to the provisions of Section 29 [2] of the Limitation Act, 1963 ['the Limitation Act', for short]. The Limitation Act was enacted to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith. Section 29 [2] reads as under :-

> **29. Savings**.—
>
> [2] Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 [inclusive] shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

20. Section 29 [2] of the Limitation Act prescribes that where any special or local law prescribed for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the Schedule to the Limitation Act, the provisions of Section 3 of the Limitation Act shall apply as if such period was the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Section 4 to Section 24 shall apply only in so far

as, and to the extent, they are not expressly excluded by such special or local law. In other words, when any special statute prescribes certain period of limitation as well as provision of extension up to specified time-limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent, the provision of the Limitation Act shall stand excluded.

21. Section 3 of the Limitation Act establishes that courts must dismiss any suit, appeal, or application filed after the prescribed period of limitation, even if the opposite party does not raise limitation as a defense. It acts as an absolute bar. Section 5 of the Limitation Act provides for extension of the prescribed period of limitation in certain cases, by empowering the courts to admit an appeal or application after expiry of the prescribed period of limitation, provided that the appellant or the applicant can establish that he has sufficient cause for the delay. As the intention of the Legislature in enacting sub-section [1] and sub-section [4] of Section 107 of the CGST Act is that an appeal against a decision or order of an Adjudicating Authority is to be made within three months from the date of communication and the period can be further extended, on sufficient cause being shown, by one more month ***but not thereafter***, it is evident that the provisions of Section 5 of the Limitation Act are not applicable to such an appeal for the reason that applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29[2] of the Limitation Act.

22. It is of pertinence that the Appellate Authority envisaged in Section 107 is not a court in the ordinary sense, but a quasi-judicial body, being a Tribunal. It appears at the first blush that no exception can be taken to the Order-in-Appeal dated 19.02.2026 passed by the Appellate Authority whereby the appeal filed by the petitioner as the appellant on 23.05.2025 against the Order-in-Original dated 03.01.2025 passed by the Adjudicating Authority was dismissed on 19.02.2026, as barred by limitation. The issue which therefore, arises is whether other than such a situation simpliciter, any other situation which might have taken place in

the interregnum during the period between the Order-in-Original dated 03.01.2025 and the Order-in-Appeal dated 19.02.2026 would have any significance on the point of limitation, and if the answer is in affirmative, to what extent. The issue has arisen because from the petitioner's side it is urged that the Rectification Application and the Order passed thereon have significant bearing on the point of exclusion of time period vis-à-vis the period of limitation.

23. At this juncture, a reference to Section 161 of the CGST Act is relevant. Section 161 has provided for rectification of errors apparent on the face of record. Section 161 has provided as under :-

> **Section 161. Rectification of errors apparent on the face of record.-**
> Without prejudice to the provisions of Section 160, and **notwithstanding anything contained in any other provisions of this Act**, **any authority, who has passed or issued any decision or order** or notice or certificate or any other document, **may rectify any error which is apparent on the face of record in such decision or order** or notice or certificate or any other document, either on its own motion or **where such error is brought to its notice** by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or **by the affected person within a period of three months from the date of issue of such decision or order** or notice or certificate or any other document, as the case may be :
>
> Provided that no such rectification **shall be done after a period of six months** from the date of issue of such decision or order or notice or certificate or any other document :
>
> Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission :

> Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.
>
> [emphasis supplied in bold]

24. Section 161, which is with a non obstante clause, has inter alia provided that any authority, who has passed or issued any decision or order, may rectify any error which is apparent on the face of record in such decision or order, either on its own motion or where such error is brought to its notice by the affected person within a period of three months from the date of issue of such decision or order, as the case may be. It is a right to an affected person provided he avail such right within a period of three months. It contains a stipulation that no rectification shall be done after a period of six months from the date of issue of such decision or order. The said restriction of six months shall not, however, apply in cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission. It is further provided that where such rectification adversely affects any person the principle of natural justice shall be followed by the authority carrying out such rectification.

25. Reverting back to the case in hand, it is found that the facts are not in dispute to the extent that after the Order-in-Original dated 03.01.2025, the petitioner submitted the Rectification Application under Section 161 of the CGST Act before the Adjudicating Authority within a period of three months on 08.03.2025 and thus, the Rectification Application had fulfilled the statutory condition regarding the time-limit of filing such application.

26. Deferring further deliberation in the matter of Rectification at this point, this Court finds it appropriate to deal on the preliminary point raised on behalf of the respondents. The maintainability and entertainability of the writ petition has been questioned on the premise that there is a statutory remedy in place for

preferring an appeal under Section 112 of the CGST Act and the same issue, as raised herein, can also be raised in appeal. The issue needs to be addressed first before proceeding further.

27. The issues of maintainability and entertainability of a writ petition under Article 226 of the Constitution of India, despite alternative remedy provided by the relevant statutes, have come up for discussion in **M/s Godrej Sara Lee Limited vs. Excise and Taxation Officer-cum-Assessing Authority and others, [2023] 3 SCR 871**. It has been observed that the power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be ***traceable*** in the Constitution of India. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. It has been held that though the exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition, ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him, it cannot mechanically be construed as a ground for its dismissal. The High Courts, depending on the fact situation involved in each particular case, have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the High Court should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition 'not maintainable'. It has been held that availability of an alternative remedy does not operate as an absolute bar to the maintainability of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by the statute, is a rule of policy, convenience and discretion rather than a rule of law. There is a fine but real distinction between the two

distinct concepts, entertainability and maintainability of a writ petition and the same is not to be lost sight of. The objection as to maintainability goes to the root of the matter and if such objection is found to be of substance, the Court would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of entertainability is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. When the writ petition raises a pure question of law and if investigation into facts is unnecessary, the High Court can entertain a writ petition in its discretion even though the alternative remedy is not availed of. It has been observed that where the controversy is a purely legal one and it does not involve disputed questions of fact, but only questions of law, then it should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy being available.

28. In **Glaxo Smith Kline Consumer Health Care Limited** [supra], the central question which arose for consideration was whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India ought to entertain a challenge to an Assessment Order dated 21.06.2017 raising a demand made under the provisions of Andhra Pradesh Value Added Tax Act, 2005 ['the 2005 Act', for short] and the Central Sales Tax Act, 1956 on the sole ground that the statutory remedy of appeal against that Order stood foreclosed by the law of limitation. Pursuant to the Assessment Order dated 21.06.2017, the respondent filed an application on 08.05.2018 highlighting an error made in raising the demand based on incorrect turnover and the said application came to be rejected by an Order dated 11.05.2018. Aggrieved by the Order dated 11.05.2018, the respondent filed an appeal before the Appellate Authority on 28.05.2018, which came to be rejected on 17.08.2018. Thereafter, the respondent filed an appeal before the Appellate Authority against the original Assessment Order dated 21.06.2017 under Section 31 of the 2005 Act on 24.09.2018. The said appeal was dismissed by the Appellate Authority on 25.10.2018 being barred by limitation and also, because no sufficient cause was

made out. The respondent had thereafter, filed a writ petition for quashing and setting aside of the Assessment Order dated 21.06.2017 before the High Court. The writ petition was allowed on 19.11.2018 and the Assessment Order dated 21.06.2017 was set aside and quashed. Against the decision of the High Court, the appellant preferred an appeal before the Hon'ble Supreme Court.

28.1. In the above given fact situation, the Hon'ble Supreme Court has held that even though the High Court can entertain a writ petition against any order or direction passed / action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law. Where a right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that statute must only be availed of. Though a statute cannot bar and curtail remedy under Article 226 or Article 32 of the Constitution, the constitutional court would certainly take note of the legislative intent manifested in the provisions of the statute and would exercise its jurisdiction consistent with the provisions of the enactment. 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 pass order which can be settled only through a mechanism prescribed by a statute. The Hon'ble Supreme Court has taken note of the fact that the statutory appeal was filed by the respondent beyond the maximum time-limit for condoning the delay in terms of Section 31 of the 2005 Act, which prescribed for a maximum period of limitation of sixty days. The Hon'ble Court has further held that Section 5 of the Limitation Act cannot be invoked by the constitutional court for maintaining an writ petition beyond the maximum prescribed period of limitation in exercise of the powers under Article 226 of the Constitution of India. The Hon'ble Court has proceeded to observe that what it cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution. As the respondent-writ petitioner approached the High Court

after expiry of the maximum limitation period of sixty days prescribed under Section 31 of the 2005 Act from the date of communication of the Order dated 21.06.2017, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition as a matter of course. 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. Holding that the High Court ought not to have been entertained the subject writ petition filed by the respondent, the writ petition was dismissed by setting aside the impugned Judgment and Order of the High Court.

28.2. The Hon'ble Supreme Court has held as under :-

> 19. [.....] 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 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 non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses 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. [.....]

29. The decision in **Glaxo Smith Kline Consumer Health Care Limited** has referred to an earlier three-Judge decision in **Oil and Natural Gas Corporation Limited vs. Gujarat Energy Transmission Corporation Limited and others, [2017] 5 SCC 42**. The facts there, in a nutshell, were that the appellant filed an appeal on 07.02.2008 under Section 125 of the Electricity Act, 2003 against a Judgment dated 28.09.2007 delivered by the Appellate Tribunal for Electricity. At first, the appellant filed a review application against the Judgment dated 28.09.2007 before the Tribunal on 10.01.2008, which was dismissed on 07.03.2008. Section 125 of the Electricity Act, 2003 prescribes a normal period of sixty days to file an appeal before the Supreme Court against the decision or order of the Appellate Tribunal and the proviso thereof prescribes for a further period of sixty days for the Supreme Court to condone the delay, provided the appellant satisfies that he was prevented by sufficient cause from filing the appeal within the normal period of sixty days. The Hon'ble Court found that even the review application was filed after expiry of sixty days, the limitation prescribed for filing an appeal under Section 125, and found lack of due diligence on the part of the appellant.

29.1. The Hon'ble Court has held that if the delay is statutorily not condonable, the delay cannot be condoned. As regards the power to condone the delay in the face of specific prescription of limitation in a special enactment with an outer limit for condonation, the Hon'ble Court has observed as under :-

> 15. [.....] 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 [.....] 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.

30. The propositions which clearly emerge from above decisions are that :-

[i] When a special enactment prescribes for a period of limitation for filing an appeal before a special adjudicatory forum which does not have any discretion to condone delay in filing such appeal beyond the prescribed period, such prescription regarding limitation has a binding effect as it is based on fundamental and general issues of public policy.

[ii] In the event any appeal is filed after the period of limitation prescribed by the special enactment, the principle, same as in Section 3 of the Limitation Act, get operational in that the appeal filed beyond the prescribed period of limitation must be dismissed, even if the opposite party does not raise limitation as defense. As the principle acts as an absolute bar, such delay is not condonable even under Article 142 of the Constitution. Consequently, the delay is also not condonable in a writ petition filed under Article 32 or Article 226 of the Constitution.

[iii] When a writ petition under Article 226 of the Constitution is filed by not availing the statutory remedy of appeal before the special adjudicatory forum constituted by the special enactment in spite of such special adjudicatory forum having the authority and jurisdiction to decide the issue raised in the writ petition, the High Court for entertaining such writ petition requires to examine, at first, whether the writ petition is filed within the period of limitation prescribed in the special enactment or it is filed beyond the period of limitation prescribed in the special enactment. If it falls in the second category, Section 5 of the Limitation Act cannot be invoked by the High Court for maintaining a writ petition beyond the maximum prescribed period of limitation in exercise of powers under Article 226 of the Constitution of India.

[iv] In the event it is found that the writ petition is filed beyond the period of limitation prescribed in the special enactment, then the High Court keeping the principle that delay cannot be condoned if the delay is statutorily not condonable and it being a policy of legislation and the principle in Section 3 of the Limitation Act gets activated, is not to entertain the writ petition. The reason is that at the time of filing the writ petition, the option of statutory remedy of appeal was not available. It is availability of the alternative and statutory remedy of the option of filing an appeal, which permits exercise of power under Article 226 of the Constitution to entertain a writ petition, not non-availability of the option of filing an appeal.

[v] In the event the writ petition is filed within the period of limitation prescribed in the special enactment, the High Court has the discretion to entertain the writ petition, despite availability of statutory remedy of appeal under the special enactment before the special adjudicatory forum.

31. For the case in hand, it is of utmost relevance to examine the aspect first : whether the present writ petition under Article 226 of the Constitution of India is

preferred within the period of limitation prescribed by the CGST Act, which is a special enactment.

32. The Order-in-Appeal, impugned herein, has been passed by the Appellate Authority on 19.02.2026. The said Order-in-Appeal is an appealable Order under Section 112 of the CGST Act. As per Section 112[1] of the CGST Act, an appeal against Order passed under Section 107 of the CGST Act can be preferred before the Appellate Tribunal within a period of three months from the date on which the Order sought to be appealed against is communicated to the affected person. Under Section 112[6], the Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in Section 112[1], if it is satisfied that there was sufficient cause for not presenting it within that period. Furthermore, by a Notification bearing S.O. 4220[E] dated 17.09.2025, the Ministry of Finance, Government of India has notified the date, 30.06.2026 as the date upto which an appeal can be preferred before the Appellate Tribunal under Section 112 [1] in respect of a case where the Order sought to be appealed against is communicated to the affected person preferring the appeal before 01.04.2026. In the present case, the writ petition against the Appellate Order dated 19.02.2026 is found to have been preferred within the normal period of limitation of three months prescribed in Section 112[1] of the CGST Act and also, within 30.06.2026. As such, the bar expounded in **Oil and Natural Gas Corporation Limited** and **Glaxo Smith Kline Consumer Health Care Limited,** that a period of delay which is beyond the period of limitation prescribed in the special enactment cannot be condoned in a writ petition preferred under Article 226 of the Constitution is not attracted in the present case.

33. The question of entertainability, however, still remains, in view of the availability of the option of preferring the statutory appeal. The question is to be examined from the standpoint whether the writ petition has been filed as a matter of course or the writ petition has raised any question of law like patent illegality or jurisdictional error or proceeding without authority or there is failure of principles

of natural justice or causes of such nature. If the writ petition is found to have been filed as a matter of course, then the writ petition is not to be entertained ordinarily, and the writ petitioner is to be relegated to take recourse before the statutory appellate forum constituted under the special enactment, the CGST Act, more particularly, when the appealable order contains a demand which calls for pre-deposit for entertaining the appeal by the statutory appellate forum. The question of entertainability requires examination from the perspective whether this Court will exercise the discretion to entertain the writ petition in the given facts and circumstances of the case, or to relegate the petitioner to the special adjudicatory forum, that is, the Appellate Tribunal constituted under the CGST Act.

34. It is a settled proposition that the doctrine of merger is not applicable to a case where an appeal is dismissed on the ground of limitation, without going into the merits. It has been held in **Chandi Prasad vs. Jagdish Prasad, [2004] 8 SCC 724**, to the effect that when an appeal is dismissed on the ground that delay in filing the same is not condoned, the doctrine of merger shall not apply. The Hon'ble Supreme Court of India in **Raja Mechanical Company Private Limited vs. Commissioner of Central Excise, Delhi, [2012] 12 SCC 613**, after referring to the decision in **Chandi Prasad** [supra], has held that if for any reason an appeal is dismissed on the ground of limitation and not on merits, that order would not merge with the order passed by the appellate authority. The same position has been reiterated in the case of **Glaxo Smith Kline Consumer Health Care Limited** [supra] by holding that rejection of delay application by the appellate forum does not entail in merger of the assessment order with that order. In view of such settled proposition, the issue involved in this writ petition, with the admitted facts, is in a narrow compass. Therefore, in this writ petition, this Court is concerned with the aspect of rejection of the Appeal on the ground of delay, not on the merits of the Order-in-Original dated 03.01.2025.

35. At this juncture, this Court finds it relevant to refer to Section 14 of the Limitation Act which provides for exclusion of time of proceeding bona fide in court without jurisdiction. Section 14 of the Limitation Act reads as under :-

> **14. <u>Exclusion of time of proceeding bona fide in court without jurisdiction</u>.—**
>
> [1] In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
>
> [2] In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
>
> * * * * * * * * * * *
>
> Explanation.— For the purposes of this section,—
>
> [a] in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;
>
> [b] a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

[c] misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

36. The question which fell for consideration before a three-Judge Bench of the Hon'ble Supreme Court in **Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department, [2008] 7 SCC 169**, was whether the provisions of Section 14 of the Limitation Act were applicable to an application submitted under Section 34 of the Arbitration and Conciliation Act, 1996 ['the 1996 Act'] for setting aside an award made by the Arbitrator. The Hon'ble Court examined the provisions of Section 34 of the 1996 Act, and Section 5, Section 14 and Section 29[2] of the Limitation Act to answer the question. It has been held that there is a fundamental distinction between the discretion to be exercised under Section 5 and exclusion of the time provided in Section 14 of the Limitation Act. The power to excuse delay and grant an extension of time under Section 5 is discretionary whereas under Section 14, exclusion of time is mandatory, if the requisite conditions are satisfied. The effect of Section 14 is that in order to ascertain what is the date of expiration of the 'prescribed period', the days excluded from operating by way of limitation, have to be added to what is primarily the period of limitation prescribed. The total period of four months, prescribed in Section 34 of the 1996 Act within which an application for setting aside an arbitral award has to be made, being not unusually long, it could be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of four months. The Hon'ble Court has held that from the scheme and language of Section 34 of the 1996 Act, the intention of the Legislature to exclude the applicability of Section 14 of the Limitation Act is not manifest. Holding that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period and having regard to the legislative intent, the Hon'ble Court has held that the

provisions of Section 14 of the Limitation Act is applicable to an application submitted under Section 34 of the 1996 Act for setting aside an arbitral award.

37. While arriving at the above conclusion, the Hon'ble Supreme Court in **Consolidated Engineering Enterprises**, upon analysis of Section 14 of the Limitation Act, has culled out the following conditions which must be satisfied before Section 14 can be pressed into service :-

[1] Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

[2] The prior proceeding had been prosecuted with due diligence and in good faith;

[3] The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

[4] The earlier proceeding and the latter proceeding must relate to the same matter in issue and;

[5] Both the proceedings are in a court.

38. In **M.P. Steel Corporation vs. Commissioner of Central Excise, [2015] 7 SCC 58**, an appeal was preferred before the Customs, Excise and Gold [Control] Appellate Tribunal [CEGAT] instead of the Commissioner [Appeals] under Section 128 of the Customs Act, 1962. The CEGAT had jurisdiction to deal with appeals under Section 129-A. As the Department instead of preferring the appeal before the Commissioner [Appeals], preferred the appeal before the CEGAT against a decision taken by a Collector of Customs, the Hon'ble Supreme Court in **Commissioner of Customs and Central Excise vs. M.P. Steel Corporation, [2004] 13 SCC 357**, held that the CEGAT had no jurisdiction to entertain such an appeal.

39. It was in the context of this abortive prior proceeding, the Hon'ble Supreme Court has examined the issue of applicability of the principle in Section 14 of the Limitation Act, to any subsequent proceeding before a tribunal or a quasi-judicial body. The Hon'ble Supreme Court, at first, observed that the first four conditions laid down in **Consolidated Engineering Enterprise** case were found to have been met. However, condition no. 5 was not found to have been met stricto senso as both the proceedings were before quasi-judicial tribunals and not in the court. The Hon'ble Court has examined the question whether the Limitation Act extends beyond the court system and embraces within its scope quasi-judicial bodies as well. The Hon'ble Court has proceeded to hold that though Section 14 of the Limitation Act may not apply, yet the principles of Section 14 will get attracted in that case. The context of Section 14 would require that the term 'court' be liberally construed to include within it quasi-judicial tribunals as well. The reasoning put forward by the Hon'ble Court is that the principle of Section 14 is that whenever a person bona fide prosecutes with due diligence another proceeding which turns out to be abortive because it is without jurisdiction, or otherwise no decision could be rendered on merits, the time taken in such proceeding ought to be excluded as otherwise the person who has approached through such proceeding would be penalized for no fault of his own. In case of civil proceedings, the Hon'ble Court has observed that civil proceedings are of many kinds and need not be confined to suites, appeals or applications which are made only in courts stricto senso. The language used in Section 14 or civil proceeding takes within its embrace the proceedings before a quasi-judicial tribunal under a particular statute. The Hon'ble Court has concluded that the principle of Section 14 which is a principle based for advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately had ended without a decision on the merits of the case.

40. In **Suryachakra Power Corporation Limited vs. Electricity Department, [2016] 16 SCC 152**, the Hon'ble Supreme Court has considered the prescriptions

contained in Section 5 and Section 14 of the Limitation Act, 1963 in the context of an appeal under Section 125 of the Electricity Act, 2003, which appeal is to be filed before the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal. As per the proviso to Section 125, the Supreme Court, if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the period of sixty days, could allow it to be filed within a further period not exceeding sixty days. In that context, the Hon'ble Supreme Court has held that the maximum period within which an appeal can be filed under Section 125 is 120 days which includes the discretion granted to the Supreme Court to condone the delay limited to sixty days. It has been held that it cannot condone the delay beyond sixty days by invoking Section 5 of the Limitation Act and ignoring the special limitation prescribed under the Electricity Act. It is the same proposition which is echoed in **ONGC** Case and **Glaxo Smith Kline** Case. At the same time, the Hon'ble Supreme Court has held that the principles under Section 14 of the Limitation Act, 1963 can be applied even when Section 5 of the Limitation Act is not applicable, is no more *res integra* in view of the decision in **M.P. Steel Corporation** [supra]. The Hon'ble Court has held that the two main ingredients required for attracting the principles under Section 14 are that the party should be prosecuting another civil proceeding with due diligence and the prosecution should be in good faith. It is not enough that the one part is satisfied. Both due diligence and good faith must be established.

41. In the **ONGC** case, the decisions in **M.P. Steel Corporation** and **Suryachakra Power Corporation Limited** are considered, as a review application was filed before the Appellate Tribunal for Electricity therein in the interregnum. As the review application was filed before the Appellate Tribunal after expiry of the limitation that was prescribed, the Hon'ble Supreme Court has held that there was no due diligence on the part of the respondent for bringing in the applicability of the proposition laid down in **Suryachakra Power Corporation Limited** in assistance of the appellant.

42. In **Glaxo Smith Kline Consumer Health Care Limited**, the decisions in **ONGC, M.P. Steel Corporation** and **Suryachakra Power Corporation Limited** have been referred to and found no applicability of the provision of Section 14 of the Limitation Act as the appellant was found wanting on due diligence in the given facts and circumstances of the case.

43. In all the cases of **Consolidated Engineering Enterprises, M.P. Steel Corporation, Suryachakra Power Corporation Limited, Gujarat Energy Transmission Corporation Limited** and **Glaxo Smith Kline Consumer Health Care Limited,** the statutes involved were the Arbitration and Conciliation Act; the Customs Act; the Electricity Act; and the Andhra Pradesh Value Added Tax Act. All these statutes are special enactments which have provided for a prescribed period of limitation for filing an application, appeal, etc. As a result, in view of applicability of the provision of Section 29[2] of the Limitation Act, the operation of Section 5 of the Limitation Act for condonation of any period of delay beyond the statutorily prescribed limitation period stands strictly excluded. While holding that as the provision of Section 14 of the Limitation Act is not applicable stricto senso to quasi-judicial tribunals involved therein, it has been observed that as the proceedings before such quasi-judicial tribunals are civil proceedings, the principles of Section 14 would certainly apply to exclude time taken in prosecuting any prior proceeding which was pursued bona fide and with due diligence, which ultimately was abortive. As such proposition of law has been settled, this Court is of the clear view that while the provision of Section 5 of the Limitation Act is in no way applicable to Section 107 and Section 112 of the CGST Act to condone any period of delay beyond the periods what have been prescribed therein, the principle of Section 14 of the Limitation Act is applicable provided all the conditions in relation to the prior proceeding are found satisfied.

44. For applicability of the principle embedded in Section 14, due diligence and good faith are the two essential pre-requisites. It has been exposited in **Consolidated**

Engineering Enterprises that due diligence cannot be measured by absolute standards. Due diligence is a measure of prudence or activity expected from a reasonable and prudent person under the particular circumstances. The principle further requires that the prior proceeding should have been prosecuted in good faith. Nothing shall be deemed to be in good faith which is not done with due care and attention. The principle does not come in the help of a party who is guilty of negligence, lapse or inaction. Whether there were good faith and due diligence are matters to be decided in the facts and circumstances obtaining in the concerned case. Therefore, it is in the light of the above principles, the case of the petitioner herein is to be examined on the two aspects, *firstly*, whether the petitioner exercised due diligence in pursuing the prior proceeding; and *secondly*, whether such prior proceeding was pursued in good faith.

45. Reverting back to Section 161 of the CGST Act, it is found that for an affected person the time period provided by Section 161 of the CGST Act for filing a Rectification Application before the Adjudicating Authority is three months from the date of issue of the decision or order whereby, he has found himself aggrieved. In the case in hand, the Order-in-Original was passed on 03.01.2025 and the Rectification Application was filed well within the period of three months on 08.03.2025. Therefore, it cannot be said that there was no due diligence, or negligence, or inaction, on the part of the petitioner in filing the Rectification Application, which is the prior proceeding pursued relating to the same matter.

46. Section 14 further requires that the prior proceeding should have been prosecuted in good faith. The definition of 'good faith' is provided in Section 2[h] of the Limitation Act. As per the definition provided therein, 'good faith' – nothing shall be deemed to be done in good faith which is not done with due care and attention. Therefore, to take shelter under the provision of Section 14 of the Limitation Act about pursuing the prior proceeding in good faith an applicant has to demonstrate that there was due care and attention on his part.

47. To demonstrate good faith on his part, it is urged on behalf of the petitioner that it has been held by the Supreme Court as well as the jurisdictional High Court that ITC should not be denied to a bonafide purchaser merely because of the supplier's failure to upload the invoices or to file accurate returns in time. To urge the point, a decision of the Hon'ble Supreme Court in **Civil Appeal No[s]. 2042-2047/2015 [The Commissioner Trade and Tax Delhi vs. M/s Shanti Kiran India [P] Ltd.]**, decided on 09.10.2025; and a decision of a Division Bench of this Court in **Writ Petition [Civil] no. 5725 of 2022 [M/s McLeod Russel India Limited vs. the Union of India and others]**, decided on 09.12.2025, have been pressed into service. The contention raised is that non-consideration of the said settled proposition by the Adjudicating Authority who exercises the power of rectification within the contours of Section 161 of the CGST Act was an errorapparent on the face of record. This Court finds force in the above reasoning advanced on behalf of the petitioner in view of the exposition adverted to in the next paragraph.

48. Sub-section [2] of Section 254 of the Income Tax Act, 1961 allows the Appellate Tribunal to amend any order passed by it under sub-section [1] of Section 254, at any time, within four years from the date of the order, with a view to rectifying any mistake apparent from the record, and can make such amendment if the mistake is brought to its notice by the Assessee or the Assessing Officer.

48.1. In **the Assistant Commissioner, Income Tax, Rajkot vs. Saurashtra Kutch Stock Exchange Ltd., [2008] 14 SCC 171**, the Hon'ble Supreme Court has held that non-consideration of a decision of the jurisdictional High Court or the Supreme Court is such a mistake, which can be said to be a 'mistake apparent from the record' and the same can be rectified under Section 254[2] of the Income Tax Act, 1961. If the point is covered by a decision of the jurisdictional Court rendered prior or even subsequent to the order passed, it can be said to be 'mistake apparent from the record' and can be corrected on the basis of the well settled proposition that a judicial decision operates retrospectively.

49. The collection of information by the petitioner on the aspect that the allegedly erring supplier filed GSTR-1 in April, 2021 for the period of March, 2021 before the cut-off date of September, 2021 go to demonstrate further that prima facie there was absence of the elements of lack of due care and attention in the petitioner in pursuing the Rectification Application. In other words, it cannot be said that the petitioner was not pursuing the Rectification Application in good faith. It is pertinent to mention that this Court has examined the above point urged on behalf of the petitioner only from the standpoint whether the petitioner pursued the prior rectification proceeding in good faith or not. It is made clear that this Court is not examining the issue whether the Adjudicating Authority ought to have rectified the Order-in-Original or not, as the legality and validity of only the Order-in-Appeal dated 19.02.2026 only which has not merged with either the Order-in-Original dated 03.01.2025 or the Order passed in the Rectification Application on 24.04.2025, is under consideration in this writ petition.

50. With all the conditions of Section 14 of the Limitation Act having been found satisfied, the principle of exclusion of time is found applicable to exclude the time period during which the Rectification Application was being pursued by the petitioner. Therefore, the period between : [i] 08.03.2025, the day when the Rectification Application under Section 161 of the CGST Act was filed; and [ii] 24.04.2025, the day of the Order by which the Rectification Application was dismissed; inclusive of both days, is to be excluded, following Explanation [a] of Section 14, while counting the period of limitation to file the appeal under Section 107 of the CGST Act against the Order-in-Original dated 03.01.2025. Therefore, forty-eight days will stand excluded in between 03.01.2025, the day when the Order-in-Original was passed, and 23.05.2025, the day when the appeal was filed against the Order-in-Original.

51. In terms of Section 2[35] r/w Section 9 of the General Clause Act, 1897, the normal period of three months prescribed for filing an appeal under Section 107[1] of the CGST Act against the Order-in-Original dated 03.01.2025 would have expired on 03.04.2025. The extended period of limitation of further one month under Section 107[4] of the CGST Act would have expired on 03.05.2025. To it, a period of forty-eight days is to be added. If such period of forty-eight days is added, the period of limitation for filing the appeal is held to be available upto 20.06.2025.

52. The appeal under Section 107 was filed by the petitioner on 23.05.2025, which was less than one month prior to 20.06.2025. Therefore, it is to be held that the appeal was presented by the petitioner beyond the normal period of limitation of three months but, within with the extended period of one month. The liability with which the petitioner has been saddled with by the Order-in-Original has already been mentioned above. In view of dismissal of the appeal of the petitioner on the ground of limitation, which order has not merged with the Order-in-Original, it is the petitioner who is to suffer prejudice if he is deprived of an opportunity to assail the legality and validity of the Order-in-Original on merits.

53. This Court is of the considered view that merely for the reason that the petitioner as an appellant did not file any separate application along with the appeal, which was presented with delay, explaining the reasons for late presentation of the appeal, the petitioner should not be deprived of atleast one opportunity to explain the reasons why the appeal could not be presented within the normal period of limitation of three months and the same had to be presented beyond such normal period of limitation but within the extended period of limitation.

54. Order XLI of the Code of Civil Procedure, 1908 has provided for Appeals from Original Decrees. Sub-rule [1] of Rule 3A of Order XLI, CPC has prescribed that when an appeal is presented after the expiry of the period of limitation specified

therefore, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

54.1. In this connection, the decision of the Hon'ble Supreme Court in **State of Madhya Pradesh and another vs. Pradeep Kumar and another, [2000] 7 SCC 372,** can be referred to.

54.2. In the context of sub-rule [1] of Rule 3A, the Hon'ble Court has observed as under :-

> 11. No doubt sub-rule [1] of Rule 3-A has used the word 'shall'. It was contended that employment of the word 'shall' would clearly indicate that the requirement is peremptory in tone. But such peremptoriness does not foreclose a chance for the appellant to rectify the mistake, either on his own or being pointed out by the court. The word 'shall' in the context need be interpreted as an obligation cast on the appellant. Why should a more restrictive interpretation be placed on the sub-rule? The Rule cannot be interpreted very harshly and make the non-compliance punitive to an appellant. It can happen that due to some mistake or lapse an appellant may omit to file the application [explaining the delay] along with the appeal.
>
> 12. It is true that the pristine maxim *vigilantibus non dormientibus jura subveniunt* [law assists those who are vigilant and not those who sleep over their rights]. But even a vigilant litigant is prone to commit mistakes. As the aphorism 'to err is human' is more a practical notion of human behaviour than an abstract philosophy, the unintentional lapse on the part of a litigant should not normally cause the doors of the judicature permanently closed before him. The effort of the court should not be one

of finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, on account of any mistake committed by him, but to see whether it is possible to entertain his grievance if it is genuine.

* * * * *

19. The object of enacting Rule 3-A in Order 41 of the Code seems to be two-fold. First is, to inform the appellant himself who filed a time-barred appeal that it would not be entertained unless it is accompanied by an application explaining the delay. Second is, to communicate to the respondent a message that it may not be necessary for him to get ready to meet the grounds taken up in the memorandum of appeal because the court has to deal with application for condonation of delay as a condition precedent. Barring the above objects, we cannot find out from the Rule that it is intended to operate as unremediably or irredeemably fatal against the appellant if the memorandum is not accompanied by any such application at the first instance. In our view, the deficiency is a curable defect, and if the required application is filed subsequently the appeal can be treated as presented in accordance with the requirement contained in Rule 3-A Order 41 of the Code.

20. In the result we allow this appeal and set aside the impugned judgment. The matter shall now go back to the High Court for disposal of the application to condone the delay in filing the second appeal. If the explanation was found satisfactory to the High Court the second appeal will have to be disposed of in accordance with law. This appeal is disposed of accordingly.

55. The procedure in appeal has been delineated in Section 107[8] of the CGST Act. As per sub-section [8] of Section 107, the Appellate Authority shall give an opportunity to the appellant to be heard. It is inherent in the prescription of Section 107[8] for the Appellate Authority to provide a reasonable opportunity to an appellant. This Court is of the considered view that the same principle, as outlined in **Pradeep Kumar** [supra], is applicable on all fours in case of appeals of the present nature presented. In other words, if an appeal is presented beyond the normal period of three months but within a further period of one month without providing any explanation for the period of delay occurred in presentation either in the memo of appeal, or in a separate application, then the Appellate Authority should provide atleast one opportunity to the appellant to explain the delay showing sufficient cause.

56. If the Appellate Authority finds that the appeal presented by the petitioner within the extended period of limitation is without any application for condonation of delay, then before dismissing the appeal as time-barred, even in the absence of any explanation as regards the delay caused in the memo of appeal, the Appellate Authority is cast with an obligation to provide atleast one opportunity to the appellant, that is, the petitioner to submit an application to explain the reasons which caused the delay in presentation of the appeal, if the appellant intents to do so. It is only after grant of such an opportunity and non-filing of an application by the applicant for condonation of delay, the Appellate Authority should have proceeded to dismiss the appeal on the ground of delay. If in the event the appellant after being so allowed, submits an application explaining the reasons for delay then the Appellate Authority is obligated to consider the explanation provided by the appellant for the period of delay, and depending upon the satisfaction reached on such explanation, it has to proceed to take a decision as regards presence of sufficient cause or otherwise.

57. In the course of deliberation, another issue cropped up as to whether the period of limitation is to be counted from the date of decision on the Rectification

Application. However, the learned counsel for the parties have not pressed on the point, the issue is left open for consideration in an appropriate case.

58. Summing up, having not proceeded in the afore-stated manner, the impugned Order-in-Appeal dated 19.02.2026 is found to be not sustainable in law for the afore-stated reasons and the same is liable to be set aside and quashed. It is accordingly, set aside and quashed.

59. In view of setting aside and quashing of the Order-in-Appeal dated 19.02.2026, the matter stands reverted back to the Appellate Authority. The Appellate Authority shall put the petitioner-appellant on notice and provide a reasonable opportunity to him to file an application for condonation of delay so that the appellant can provide the explanation as to why the period of delay is required to be condoned. If such an application is filed and the explanation is found satisfactory to the Appellate Authority then the application and thereafter, the appeal presented by the petitioner are to be disposed of in accordance with law.

60. The writ petition is allowed to the extent indicated above. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant