

BEFORE THE HON'BLE GST TRIBUNAL, DELHI BENCH, DELHI

Tab Jewellers

vs

Joint Commissioner DGST (Appeals)

APPEAL NUMBER 260781 OF 2025

Synopsis

1. My lord, the appellant Tab jewelers has come before Hon'ble Tribunal, being aggrieved with the impugned order passed by first appellate authority dated 28.05.2025 solely on the ground of time barred.
2. My lord, the learned first appellate authority, has exercised his discretionary power in an arbitrary manner and your lordship justifies sufficient reason.
3. My lord, the appellant has filed an appeal under section 107(1) and application under section 107(4) condonation of 28 days which was denied by First appellate authority. Delay is within the permissible statutory limit (28 days < 30 days).
"107(4) says that 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."
4. My lord, there is no mala fide intention to filing the appeal late with 28 days. There are only mistakes because of paper mixed up with other document in file and it has been supported by documentary evidence along with affidavit and certificate. I would like to submit additional evidence in this regard.
5. My lord, may also please quote the judgement in the case of **COLLECTOR, LAND ACQUISITION VERSUS KATIH** Hon'ble supreme court held that **Delay in filing an appeal is usually not intentional, as litigants rarely benefit from it. Condoning delay ensures justice is served on merits rather**

than being denied on technicalities. Courts must adopt a pragmatic, justice-oriented approach when assessing reasons for delay. There should be no assumption of mala fide; the focus must remain on ensuring fair adjudication.

Prayer: - My lord, the appellant prays for the delay of 28 days in filing the appeal before the first appellate authority may kindly be condoned in the interest of justice, as the delay was due to bona fide reasons and beyond the control of the appellant.

BEFORE THE HON'BLE GST TRIBUNAL, DELHI BENCH,
DELHI

APPEAL NUMBER 260781 OF 2025

TAB JEWELERS

NAME OF COUNSELS: ADV, MINAKSHI JAIN & CA POONAM JAIN

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FORM GST APL – 05
[See rule 110(1)]

Appeal to the Appellate Tribunal

1. GSTIN/ Temporary ID /UIN - 123456789
2. Name of the appellant – TAB JEWELLERS
3. Address of the appellant – MODEL TOWN, DELHI
4. Order appealed against: FIRST APPELLATE AUTHORITY
5. Order Number **XXXXXXXX** Date- 28.05.2025
6. Name and Address of the Authority passing the order appealed against – JOINT COMMISSIONER (APPEALS), ZONE X, GST BHAVAN, DGST DEPARTMENT, NEW DELHI
7. Date of communication of the order appealed against – 28.05.2025
8. Name of the representative – ADV. MINAKSHI JAIN & POONAM JAIN CA
9. Details of the case under dispute:
 - i. Brief issue of the case under dispute :-
 The ITC was to be reversed because the appellant had not made payment to the supplier ABC & CO within 180 days from the date of taxable invoice.
 - ii. Description and classification of goods/ services in dispute “ NA”
 - iii. Period of dispute (iv) Amount under dispute: NA
 - iv. Amount under dispute:

Description	Central tax	State/ UT tax	Integrated tax	Cess
a) Tax / Cess				
b) Interest				
c) Penalty				
d) Fees				

e) Other charges				
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(v) Market value of seized goods - NA

10. Whether the appellant wishes to be heard in person? YES

11. Statement of facts : AS PER SEPARATE NOTES ON FACTS ENCLOSED

12. Grounds of appeal AS PER SEPARATE NOTES ON GROUNDS ENCLOSED

13. Prayer AS PER SEPARATE NOTES ON PRAYER ENCLOSED

14. Details of demand created, disputed and admitted

Particulars of demand	Particulars	Central tax	State/UT tax	Integrated tax	Cess	Total amount		
	Amount demanded/ rejected >, if any (A)	a) Tax/ Cess	1,80,000 (IGST)	NA	NA	NA	1,80,000/-	2,66,000/-
		b) Interest					86,000/-	
		c) Penalty					<	
							total	
			86,000 (Interest)				>	

		d) Fees	NA	NA	NA		<total >	
		e) Other charges					<total >	
	Amount under	a) Tax/ Cess	NA	NA	1,80,000/-		1,80,000/-	2,66,000/-
		b) Interest			86,000/-		86,000/-	
		c) Penalty					< total >	
		d) Fees					< total >	

	dispute	e) Other charges					< total >	
	(B)	a) Tax/ Cess	NA	NA	NA		< total >	
		b) Interest					< total >	
		c) Penalty					< total >	
	Amount admitted (C)	d) Fees					< total >	
		e) Other charges					< total >	< total >

15. Details of payment of admitted amount and pre-deposit:

(a) Details of amount payable:

Particulars		Central tax	State/UT tax	Integrated tax	Cess	Total amount	
a) Admitted amount	Tax/ Cess	NA	NA	NA	NA	<total >	<total >

			NA	NA	NA		< total >	
		Interest					< total >	
		Penalty					< total >	
							< total >	
		Fees					< total >	
		Other charges					< total >	

b) Pre-deposit 1[10% of disputed tax/cess but not exceeding Rs.20 crore each in respect of CGST, SGST, cess and not exceeding Rs.40 crores in respect of IGST]	Tax/ Cess					18,000/-	
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2[(b) Details of payment of admitted amount and pre-deposit of 10% of the disputed tax and cess but not exceeding Rs. 20 crore each in respect of CGST, SGST, cess and not exceeding Rs. 40 crore in respect of IGST.]

Sr. No.	Description	Tax payable	Paid through Cash/ Credit Ledger	Debit entry no.		Amount of tax paid			
						Integrated tax	Central tax	State/UT tax	CESS
1	2	3	4	5	6	7		8	9
			Cash	NA	NA	NA		NA	NA

1.	Integrated		Ledger					
			Credit					

	tax		Ledger	NA	NA	NA	NA	NA
2.			Cash Ledger	NA	NA	NA	NA	NA

	Central tax		Credit Ledger	NA	NA	NA	NA	NA
3.	State/UT tax		Cash Ledger	NA	NA	NA	NA	NA
			Credit Ledger	NA	NA	NA	NA	NA
4.	CESS		Cash Ledger	NA	NA	NA	NA	NA
			Credit Ledger	NA	NA	NA	NA	NA

(c) Interest, penalty, late fee and any other amount payable and paid:


Sr. No.	Description	Amount payable				Debit entry no.	Amount paid			
		Integrated tax	Central tax	State/UT tax	CESS		Integrated tax	Central tax	State/UT tax	CESS
1.	Interest									
2.	Penalty									
3.	Late fee									
4.	Others (specify)									

4 [15. [Place of supply wise details of the integrated tax paid (admitted amount only) mentioned in the Table in sub-clause (a) of clause 14 (item (a)), if any

Place of Supply (Name of State/UT)	Demand	Tax	Interest	Penalty	Other	Total
1	2	3	4	5	6	7]
	Admitted amount [in the Table in sub-clause (a) of clause 14 (item (a))]	NA	NA	NA	NA	NA
		NA	NA	NA	NA	NA

Verification

I, AA hereby solemnly affirm and declare that the information given hereinabove is true and correct to the Best of my knowledge and Belief and nothing has been concealed therefrom.



Place: DELHI

Date: 30.05.2025

FOR TAB JEWELLERS

DIRECTOR

ANNEXURE A**BEFORE THE HON'BLE GST TRIBUNAL, DELHI BENCH, DELHI****APPEAL NUMBER 260781 OF 2025****In the matter of:**

Tab Jewellers

Model Town,

New Delhi

GSTIN NO. 07AA123456789Z

Versus

Joint Commissioner DGST (Appeals)

Delhi GST Department

ITO, Delhi

Appellant

Respondents

(1) Assistant Commissioner

ZONE 10

Delhi GST Department

ITO, Delhi

Appeal under section 112 read with rule 110 read with section 107 of the DGST Act 2017 and DGST Rules there under and further read with CGST Act 2017 – Alleging non-reversal of ITC under Section 16 read with Rule 42 of the DSGT Rules. The ITC was to be reversed because the appellant had not made payment to the supplier ABC & CO within 180 days from the date of taxable invoice.

HON'BLE President and his companion members of the HON'BLE GST Tribunal – Bench

The appellant respectfully submits for kind consideration of this HON'BLE Tribunal as under :

All conditions precedent for filing of the appeal have been satisfied as under:

1. The appellant is a registered person of the Delhi GST Department with the above GSTIN 07AA123456789Z. The appellant is engaged in the business of trading jewelry through E-portal since 01/10/2017.
2. The appeal is filed within the limit period as the order under appeal was received by the appellant on 28/05/2025. And appeal has been filed on 07/06/2025.
3. The required conditions for filling the appeal have been satisfied.
4. The requisite fee of Rs 5000 for filing the appeal as per rule 112(5) have been deposited, challan attached herewith.
5. The order is appealable as per law.
6. A copy of the Power of attorney Adv, Minakshi Jain and CA Poonam Jain to file the appeal and also appointing Adv, Minakshi Jain and CA Poonam Jain to present and argue the matter before this Hon'ble Tribunal is attached herewith.
7. All copies annexed as per index are true copies of the originals.
8. The statutory requirement under Section 112 of the CGST Act, the mandatory pre-deposit has been duly paid prior to the filing of the appeal before the Appellate Tribunal..

ANNEXURE B**THE FACTUAL MATRIX**

The appellant is aggrieved by the actions taken by the lower authorities including the adjudication officer and the first appellate authority.

1. The Appellant is a law-abiding GST taxpayer, regularly filing all GST returns on time with no defaults. The business is genuine, with all transactions duly accepted by the department, resulting in NIL tax liability and NIL demand as currently reflected on the GST portal.
2. The tax demand raised by the Lower authority under Section 73 of the DGST Act creating demand of Rs 2,66,000/- on account of non-reversal of ITC under Section 16 read with Rule 42 of the DSGT Rules. The ITC was to be reversed because the appellant had not made payment to the supplier ABC & CO within 180 days from the date of taxable invoice. The appellant says that the delay in payment was due to the receipt of defective goods. Consequently, the appellant was directed to reverse the said ITC.
3. The appellant respectfully submits that the 28-day delay in filing the appeal under section 107(1) on 28.03.2025 occurred due to an inadvertent error by previous counsel, who mistakenly believed the appeal would be filed after the 10% pre-deposit made on 14.01.2025. Later, in March, it was discovered that the papers were misplaced among other files. Upon learning of the lapse, the counsel immediately filed the appeal. As first-time filing the appeal, we admit this bona fide mistake without any malafide intent and have supported our claim with an affidavit of client certificate of CA Poonam jain.
4. An application for condonation of delay under section 107(4) was also filed along with the appeal. However, the same was not accepted by the appellate authority. Consequently, the appeal was treated as time-barred and was dismissed without being heard on merits.

SHOW CAUSE NOTICE AND REPLY FILED.

5. A SCN dated 25.08.2024 was issued by the proper officer alleging the supplier has not reversed input tax credit that he wrongfully claimed for Rs 10,00,000/- on which Rs 1,80,000/- ITC has been claimed and utilised.

6. The appellant filed reply online on 25/09/2024, in the reply the appellant has substantiated that the appellant was not unable to pay though he wanted to pay and even there were funds in the bank, but the supplier failed to rectify the defects in the goods that were informed to him vide rectification letter.
7. Reason for non payment of supplier was given and request for drop the proceedings. But the lower authority did not consider the reply of appellant and impugned order issued on dated 30.11.2024.
8. The orders passed by the lower authorities, the appellant preferred an appeal before on dated 28.03.2025 along with condonation of delay in statutory time period the appellate authority, and contested on the documentary evidences which was dismissed *vide* order dated 28.05.2025 only on the ground that appeal was time barred and confirm the demand.

Feeling aggrieved against the orders passed by the appellate authority without giving opportunity to being heard and dismissed in limn as time barred, the appellant has filled the appeal before this Hon'ble Tribunal challenging the actions and order issued without providing the opportunity to present the case on merit dated 28/05/2025 passed by the first appellate authority.

The two questions before this Hon'ble Tribunal are:

1. Whether the appellate authority was wrong in dismissing the appeal purely on limitation grounds without considering the genuine reason for the 28 days delay, given the mandatory pre-deposit was made and the delay was due to counsel's bona fide error?
2. Is it a violation of natural justice to reject the appeal without giving the appellant a fair chance to be heard on the merits of the case?

ANNEXURE C

GROUND OF APPEAL

1. That the Impugned Original Demand Order Dated 30.11.2024 passed by Jurisdictional Assessing Authority and Appeal Dismissal Order based solely on Limitation, by Appellate Authority vide Order Dated 28.05.2025 is against the factual position of the case. Hence, the Order passed are not tenable in the eyes of law and needs to be quashed or set aside lawfully, basis factual position of the case.

Relevant Sections and Rules relied upon.

- **Extract of Subsection (4) of section 107:**

(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.

- **Extract of Subsection (8) of the section 107:**

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

2. That the Learned Appellate Authority erred in law and on facts in dismissing the appeal merely on account of a delay of 28 days in filing the appeal without appreciating that the delay was neither deliberate nor intentional but due to an inadvertent error by previous counsel, who mistakenly believed the appeal would be filed after the 10% pre-deposit made on 14.01.2025. Later, in March, it was discovered that the papers were misplaced among other files. Upon learning of the lapse, the counsel immediately filed the appeal. As first-time filing the appeal, we admit this bona fide mistake without any malafide intent and have supported our claim with an affidavit and documentary evidence which was bona fide and reasonable causes beyond the control of the appellant.

In support of our contention we have relied on the following case below:-

Collector, Land Acquisition, Anantnag v. Katiji, decided on dated 19.02.1987

The Supreme Court laid following principles that are supposed to be kept in mind while granting condonation if delay:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal, late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay. The doctrine must be applied in a rational common sense pragmatic manner.
 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.
 6. It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.
3. That the appellant submit that the present appeal can be present on merits only if the delay in filing is condoned. It is, therefore, respectfully prayed that condonation of delay be granted in the interest of justice, and the appeal may kindly be heard and decided on merits.
 4. That the Learned Appellate Authority erred in dismissing the appeal in *limn* without providing an opportunity of hearing on merits, which is a gross violation of the principles of natural justice.

It is settled in law that a person has to be granted equal and fare opportunity of being heard before any action is initiated against him. This cardinal law has been well established in the legal maxim "*audi alteram partem*".

That no order to the detriment of a person can be passed without hearing him is a well-settled proposition of law and hearing in this context means fair hearing. Hearing to be fair must be "*at a meaningful time and in a meaningful manner*".

Further, in support of our contention we have relied on the following cases below: -

- In the case of **ORYX Fisheries Private Limited Versus Union of India 2010 (10) TMI 660 - Supreme Court** held that:- The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it. The appellant gave a reply to the show cause notice but in the order of the third respondent by which registration certificate of the appellant was cancelled, without giving any reason and without giving the appellant any personal hearing, that the registration certificate of the appellant stood cancelled. If the authorities are so inclined, they can proceed from the stage of show cause notice afresh but strictly in accordance with law and following the fair procedure indicated in this judgment.
5. The order of the Learned Appellate Authority is a non-speaking order devoid of reasoning and fails to address the factual and legal grounds raised in the appeal, thereby rendering it invalid in law.
 6. The Learned Appellate Authority failed to appreciate that the appellant's challenge was on the merits of the demand, which was based on assumption and presumption, with no actual revenue impact.
 7. The underlying demand is not supported by any concrete evidence or actual revenue loss. The entire case is based on assumptions and conjectures, which is not sustainable in law.
 8. That the appellant reserves his right to add, delete, alter, amend, modify, rectify, correct any of the grounds or other grounds of appeal before the appeal is finally heard and decided off finally by the competent appellant authority in the captioned case.

ANNEXURE D**Prayer**

In light of the above submissions, the appellant most respectfully prays that this Hon'ble Tribunal may be pleased to:

1. The delay of 26 days in filing the appeal before the first appellate authority may kindly be condoned, as the delay was due to bona fide reasons and beyond the control of the appellant.
2. The matter may kindly be restored to the file of the first appellate authority with a direction to hear and decide the matter on the merits.
3. That In view of the above, please find attached here the above details and documents and proceeds further in the captioned case accordingly and in case of any further details or documents, if any required, then please give us a sufficient opportunity and reasonable time to provide you with the same.
4. Any other order as this Hon'ble Tribunal may find fit and proper in the facts and circumstances of the case, in the interest of equity and justice.

APPELLANT

VERIFICATION

I AA, AGED 40 YEARS, S/O SHRI ZZ, DO HEREBY SOMENLY AFFIRM AND DECLARE THAT THE ABOVE APPEAL HAS BEEN DRAFTED UNDER MY INSTRUCTIONS, I AM FULLY AWARE OF THE FACTS AND NOTHING HAS BEEN CONCEALED THEREFROM.

APPELLANT

Annexure E

FEE CHALLAN RS 5000 PAID

ANNEXURE F**POWER OF ATTORNEY**

This Power of Attorney is executed on 01.06.2025 at Delhi by TAB JEWELERS, a Private Limited Company incorporated under the Companies Act, 2013, having its registered office at Model Town, Delhi-110006.

WHEREAS, the Company is required to file and contest an appeal before the GST Tribunal under the DGST Act, 2017 and CGST Act, 2017.

AND WHEREAS, the Company desires to appoint and authorize Adv, Minakshi Jain, practicing advocate BCD Membership No. 3456 and CA Poonam Jain, a practicing Chartered Accountant, Membership No. 12345 to represent and act on its behalf in all matters related to the said appeal.

The Company hereby appoints Adv, Minakshi Jain and CA Poonam Jain, as its legal representative, to:

1. Prepare, sign, verify, and submit all necessary documents, affidavits, applications, and statements required for the appeal proceedings.
2. Appear, plead, and argue before the GST Tribunal on behalf of the Company.
3. Take all necessary actions for the effective representation of the case, including responding to queries, submitting additional documents, and making statements as required.
4. Perform all acts, deeds, and things necessary for the proper conduct of the case before the GST Tribunal.

The Acts performed by the legal representative will be binding upon the company.

This Power of Attorney shall remain in force until the conclusion of the appeal proceedings unless revoked earlier by the Company in writing.

For and on behalf of TAB JEWELERS

ACCEPTED BY

AA
DIRECTOR
TAB JEWELERS

CA POONAM JAIN
M. NO. 12345
FRN. 6789

Adv, MINAKSHI JAIN
M.NO. 2207
FRN.NO. 2608

ANNEXURE G**Application for Condonation of Delay U/S 107
of CGST Act'2017/ Delhi GST Act'2017**

The Special Commissioner Appeals -I
3rd Floor, Vyapar Bhawan, I.P. Estate
Department of Trade and Taxes
New Delhi - 110 002

Subject: Application for condonation of delay of 28 days in filing the appeal

In the Matter of:

Company Title: TAB JEWELLERS

GST Number: 07AA123456789Z

Financial Year: 2022-23

Order reference Number: XXXXXX

DIN: 7889765432

Respected Sir,

With reference to the captioned subject matter, We, most humbly state as under:

We, have filed the abovementioned appeal against the order passed by the Proper Officer on 30.11.2024 under section 73(5) of Delhi Goods and Services Tax (DGST) Act, 2017 against the demand of Rs 2,66,000/- for non-reversal of ITC under Section 16 read with Rule 42 of the DSGT Rules and non payment to supplier within 180 days.

Particular	Date
Order for demand	30.11.2024
Appeal to be filed within 3 months then the last date for Filing appeal	28.02.2025
30 days condonation period as per section 107 of CGST Act Last date after condonate the appeal by the Commissioner	30.03.2025
Appeal filed	28.03.2025
Within power of First Appellate Authority to condone the delay	YES, as total delay is of 28 days

As per above Table we want only condonation of 28 Days. But the First Appellate Authority have power to grant condonation of 30 days

BACKGROUND OF THE CASE

- The aforementioned order was communicated to us on 30.11.2024. The said order and notice of demand under section 73(5) of DGST Act 2017 were received by us on GST Common Portal. The due date of filing the appeal was 28.02.2025 appeal is filed on 28.03.2025.
- As per Section 107(1) of the CGST Act, an appeal against any decision or order passed by an adjudicating authority can be filed before the Appellate Authority within three months from the date of communication.
- Unfortunately, we were unable to file the appeal within the stipulated timeframe due to an inadvertent error by previous counsel, who mistakenly believed the appeal would be filed after the 10% pre-deposit made on 14.01.2025. Later, in March, it was discovered that the papers were misplaced among other files. Upon learning of the lapse, the counsel immediately filed the appeal. As first-time filing the appeal, we admit this bona fide mistake without any malafide and unintentional.

REQUEST FOR CONDONATION:

Hence there was a delay of 28 days, in filing of the appeal. The delay was without knowing the legal provisions.

Hence, we have filed an appeal prepared and filing the same with condonation of delay. We, therefore, pray that the delay in filing the appeal may be condoned.

In view of the above facts, we submit that the delay was unintentional, for bona fide reasons and due to the circumstances beyond the control of the Appellant.

Reliance is placed on the decision of the **Hon'ble Supreme Court in the case of N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123**, the Court made the following observations:

"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such Length of delay is no matter; acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

Further reliance is placed on the decision of the **Hon'ble Supreme Court in the case of Senior Bhosale Estate (HUF) v. Asstt. CIT [2019] 419 ITR 732/112 taxmann.com 134/[2020] 269 Taxman 472 (SC)** wherein it was held that unless that fact was to be refuted, question of disbelieving stand taken by assessee on affidavit, could not arise.

We submit that the expression 'sufficient cause must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in interest of justice. A litigation does not stand to benefit by resorting to delay, therefore a justice-oriented approach is required by courts. In every case of delay there can be some lapses on the part of the litigant concerned, but that alone is not enough to shut the door against him.

We, further submits that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. In matters of condonation of delay a highly pedantic approach should be eschewed and a justice-oriented approach should be adopted and a party should not be made to suffer on account of technicalities.

We, request you to be pleased to consider the facts of the case and condone the delay of days.

We further request you to please provide us with personal hearing in case you are passing any adverse order or rejecting our application for condonation.

Thanks, and Regards
For TAB JEWELLERS

Authorised Signatory

Abc
Date: 28.03.2025

Place: New Delhi

ANNEXURE H**AFFIDAVIT**

I, AA,S/O ZZ Aged 40 about years, residing at MODEL TOWN have to state as under:

I say that, I am Authorised Signatory of the appellant company.

I say that, the Appellant is a company, having Registered GSTN 07AA123456789Z Deals in jewellery business at MODEL TOWN.

I say that, the Notice Reference Number xxxxx dated 30.10.24 issued under section 73(5) of the Act to pay the demand of Rs.2,66,000 which is due to the issue of 180 days payment not made to suppliers and ITC has been claimed.

I say that, the return was selected for scrutiny/demand and the Proper Officer issued a Notice under section 73(5) of the Delhi Goods and Services Tax Act.

I say that, subsequently, the Proper Officer vide order dated 30.11.2024, issued under section 73(5) of DGST Act 2017,having demand of Rs 2,66,000.

I say that, the order was received by our office on GST Common Portal and therefore the statutory period of filing of appeal is up to 30.3.2025.

I say that, due to papers got mixed up at the office of the counsel Ms Poonam Jain and due to an inadvertent error by previous counsel, who mistakenly believed the appeal would be filed after the 10% pre-deposit made on 14.01.2025. Later, in March, it was discovered that the papers were misplaced among other files. Upon learning of the lapse, the counsel immediately filed the appeal. As first-time filing the appeal, we admit this bona fide mistake without any malafide and this mistake has happened hence we are not able to file the appeal on time.

I say that delay was as a result of not knowing the legal provisions.

I say that delay is totally bona fide and unintentional.

I pray that, the delay may be condoned and the appeal may be decided on merits.

I say that whatever stated hereinabove is true to the best of my knowledge and I believe the same to be true.

Solemnly affirmed at Delhi on the day of 28.3.2025

Thanks & Regards

ABC

From TAB JEWELERS

ANNEXURE I

BEFORE THE ASSISTANT COMMISSIONER ZONE 9 DGST DEPTT NEW DELHI

**IN THE MATTER OF: TAB JEWHEELERS
MODEL TOWN
NEW DELHI**

DIN NO. 5566778899 DATED 30.11.24

**ADJUDICATION ORDER UNDER SECTION 73 OF THE DGST ACT
ASSESSMENT YEAR 2022-23**

PRESENT FOR THE TAX PAYER – Ms. Meenakshi Jain, ADV/Ms. Poonam Jain CA

IN response to show cause notice dated 30.10.24 the couple has appeared and presented the documents and argument in detail.

During the audit proceedings under section 65 of the Act it was noticed that the supplier has not reversed input tax credit that he claimed on an invoice of the supplier ABC & CO dated 31.7.22 for Rs 10,00,000/- on which Rs 1,80,000/- ITC has been claimed and utilised. Accordingly a notice under section 73 of the Act was issued to the tax payer on 25.8.24 in detail which he has replied on 25.9.24. These documents are placed on record.

On the question of non-reversal of ITC on the issue of 180 days payment not made to suppliers and ITC has been claimed, the counsel has vehemently argued that the tax payer was not unable to pay and he wanted to pay and there was funds in the bank, but the supplier failed to rectify the defects in the goods that were sent to him rectification as per letter **enclosed (Annexure A)**.

Admittedly the sale invoiced was accepted by the tax payer and property ingots stood transferred to the tax payer and based on that he did claim input tax credit that he knew he becomes eligible strictly in accordance with the provisions of Section 16 of the DGST Act. The law does not provide any exception on this issue except strictly compliance by the tax payer that the payment must be made within 180 days from the date of supply. And the taxpayer has admittedly not paid the supplier a sum of Rs 10,00,000/- towards purchase of laptops vide suppliers ABC & Co Delhi tax invoice no. 15 dated 31.7.22 and till today also the payment has not been made.

Besides just one letter written by the tax payer has been placed on record without any other collateral evidence in support of what is stated by the tax payer including confirmation from the supplier. HENCE, notwithstanding this claim of the supply regarding defective goods, in terms of strict compliance of law,

the contention of the taxpayer is rejected and the taxpayer is directed to discharge liability of Rs 180000/- plus interest of Rs 86000/- in terms of Rule 42 of the DGST Rules 2017 read with section 16 of the Act. Penalty proceedings shall be separately initiated as per provisions of law.,

The above amounts should be paid within 30 days from the date of this order which is being put on portal instantly.

digitally signed
Assistant Commissioner -9

ANNEXURE J**BEFORE THE JOINT COMMISSIONER (APPEALS) ZONE 9 DGST DEPTT NEW DELHI**

**IN THE MATTER OF: TAB JEWHEELERS
MODEL TOWN
NEW DELHI**

DIN NO. 7889765432 DATED 28.5.2025

ORDER UNDER SECTION 107(9) OF THE DGST ACT - ASSESSMENT YEAR 2022-23

Present for the Appellant: Ms Meenakshi Jain. Adv and Ms Poonam Jain CA

The appellant has filed an appeal against the order under Section 73 of the DGST Act 2017 passed by the Assistant Commissioner, Zone 9 creating demand of Rs 2,66,000/- on account of non-reversal of ITC under Section 16 read with Rule 42 of the DSGT Rules. The ITC was to be reversed because the appellant had not made payment to the supplier ABC & CO within 180 days from the date of taxable invoice. During the course of the proceedings before the proper officer the counsels had vehemently argued that in view of the dispute with the supplier the payment time has not yet come because the goods supplied were defective. In support of such claim the appellant also produced a letter allegedly written to supplier - but no collateral evidence like dispatch LR, confirmation from the supplier or even the delivery Challan through which such goods could have been sent including e-way bill was produced. Notwithstanding the non-acceptance of such explanation the proper officer strictly interpreted the law and found that the appellant has wrongfully claimed the input tax credit and was liable to pay back under Section 73 of the DGST Act the provisions of which are straight away invocable in the present facts of the case. Accordingly he held the appellant liable to pay ITC claims with interest created the above demand.

The appeal was filed before me on 28.3.25. The appeal is filed late as it should have been filed by 28.2.25 when the three months period was over from the date of order i.e. 30.11.24 which was served on the same date. Even if giving concession for a day, still the appeal is very lated in terms statutory limitation of 3 months. When confronted the counsel sought time to file application for condonation of delay which request was granted in the interest of justice.

In the application for condonation of day of 26 days the counsel has stated that the papers were sent to the office of the counsel Ms Poonam Jain physically some time in January end of 2025. It seems the papers got mixed up and in the absence of any follow up on the part of the appellant this mistake has happened which was bona fide and unintentional. To buttress her argument the counsel has further stated that the appellant had deposited 10 percent of 180,000/- of tax amount in cash through cash ledger on 14.1.25 itself and hence there could be no motive attached for late filing of appeal. She has vehemently argued that the appellant has already deposited a mandatory 10 percent and hence she deserves a right to be heard on merits. However, limitation is a law of public policy and in order to invoke discretionary powers of the statutory authorities some sufficient and honest cause should be made and in this case I do not find

that.

I have heard the counsel at length and also gone through the statutory provision. HOWEVER, strangely there is no affidavit annexed with the application nor any confirmation from the taxpayer. It seems to be just an afterthought to bring the matter within the limitation period. Hence I do not think I can exercise any judicial discretion in favour of the appellant on such an afterthought. The contention of the counsel that the case has tremendous merit is of no consequences at this stage. The appeal is therefore dismissed in limn as time barred.

Digitally signed
Joint Commissioner (Appeals)-9

1987 (2) TMI 61 - SUPREME COURT

Other Citation: [1987] 167 ITR 471, 62 CTR 23, [1987] 66 STC 228 (SC), 1987 (28) E.L.T. 185 (SC), 1987 SCC (2) 107, JT 1987 (1) 537, 1987 AIR 1353, 1987 (2) SCR 387, 1987 (1) SCALE 413

COLLECTOR, LAND ACQUISITION VERSUS MST. KATIJI AND OTHERS

Civil Appeal No. 460 of 1987, SLP (Civil) No. 12980 of 1986, Civil 1st Appeal No. 54 of 1985

Dated: - 19-2-1987

Whether or not to apply the same standard in applying the " sufficient cause " test to all the litigants regardless of their personality in the said context is another?

Held that:- There is no warrant for according a step-motherly treatment when the " State " is the applicant praying for condonation of delay. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The courts, therefore, have to be informed of the spirit and philosophy of the provision in the course of the interpretation of the expression " sufficient cause ". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court.

Judgment / Order

Judge(s) : B. C. RAY., M. P. THAKAR

S.M. Aquil and Shakeel Ahmed, Advocates, for the respondents.

Altaf Ahmed, Advocate-General (S.K. Bhattacharya, Advocate, with him), for the appellants.

JUDGMENT

The judgment of the court was delivered by

THAKKAR J.-To condone, or not to condone, is not the only question. Whether or not to apply the same standard in applying the " sufficient cause " test to all the litigants regardless of their personality in the said context is another.

An appeal preferred by the State of Jammu & Kashmir arising out of a decision enhancing compensation in respect of acquisition of lands for public purpose to the extent of nearly 14 lakhs rupees by making an upward revision of the order of 800% (from ₹ 1,000 per kanal to ₹ 8,000 per kanal) which also raised important questions as regards principles of valuation was dismissed as time-barred being 4 days beyond time by rejecting an application for condonation of delay. Hence this appeal by special leave.

The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits ". The expression " sufficient cause " employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that :

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.
1. " Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."
3. " Every day's delay must be explained " does not mean that pedantic approach should be made. Why not every hour's delay, every second's delay. The doctrine must be applied in a rational, common sense and pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs serious risk.
6. It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the " State " which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the " State " is the applicant praying for condonation of delay. In fact, experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The courts, therefore, have to be informed of the spirit and philosophy of the provision in the course of the interpretation of the expression " sufficient cause ". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the

High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.

Appeal is allowed accordingly. No costs.

Appeal allowed.

Form GST APL – 02

[See rule 108(3)]

Acknowledgment for submission of appeal

TAB JEWELERS/ GSTIN- AA07123456789Z /564362 DATED 28.03.2024

Your appeal has been successfully filed against AARF569321Z00

1. Reference Number-
2. Date of filing- 28.03.2025
3. Time of filing- 6.30 P.M.
4. Place of filing- NEW DELHI
5. Name of the person filing the appeal- MR. AA
6. Amount of pre-deposit- 18,000/-
7. Date of rejection of appeal- 28.05.2025
8. Date of appearance- NA

Date: NA

Time: NA

9. Court Number/ Bench

Court:

Bench:

Place:

Date:

Name:

Designation:

On behalf of Appellate Authority/Appellate
Tribunal/ Commissioner / Additional or Joint
Commissioner

GSTAT FORM-01

(See Rule 29 & 49)

Interlocutory application to the Appellate Tribunal

1. GSTIN / Temporary ID: 07AFFFFFF01ZD
2. Name of the appellant: TAB JEWELERS
3. Address of the appellant: MODEL TOWN
4. Original Appeal No.:- 260781 of 2025 dated 11.05.2025
5. Date of Hearing:- NA
6. Name of representative:- CA Poonam Jain, Adv Minakshi Jain
7. Purpose of Interlocutory application:- Additional Evidence
8. Whether the appellant wishes to be heard in person? Yes
9. Grounds of appeal: ANNEXURE A
10. Statement of facts: ANNEXURE B
11. Prayer / Relief sought: ANNEXURE D

For, TAB JEWELLERS

Proprietor

Through CA Poonam Jain

Counsel of the Appellant

Place: DELHI

Date: 03.06.2025