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No Pre-Deposit for Section 122 Penalty-Only Appeals: Delhi High Court Rules on Prospective Application of the Amended Section 107(6)

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Every time Parliament rewrites a procedural condition attached to a right of appeal, it leaves behind an awkward zone of cases caught mid-stream where the proceedings that began under one set of rules and conclude under another. Section 107(6) of the CGST Act found itself in exactly this position after the proviso governing pre-deposit was substituted with effect from 1 October 2025, extending a percentage-based deposit to penalty-only orders for the very first time. For the large population of taxpayers facing proceedings under **Section 122**, the provision dealing with penalties for fake invoicing, wrongful availment of input tax credit and similar offences, this change did not arrive at the start of their disputes but somewhere in the middle.

Thus, the question arises: if the show cause notice was issued before 1 October 2025 but the order and the resulting appeal fall after that date, which law governs? The Hon'ble Delhi High Court's decision in ***Gaurav Jain & Anr. Vs Joint Commissioner (Appeals-II) CGST Delhi Zone*** [W.P.(C) No. 8414 of 2026, dated 31-7-2026] answers this squarely, and in doing so revives a principle every tax litigator learns early and then tends to forget in the rush of filing deadlines, that a right of appeal is not born on the date it is exercised, but on the date the dispute itself begins.

1. Factual Background

The Petitioners were issued a Show Cause Notice on **25.06.2025**, proposing the imposition of penalties under Section 122(1A) of the CGST Act. The demand was eventually confirmed by way of an Order-in-Original on **16.12.2025**. On the date the SCN was issued, Section 107(6) of the Act did not prescribe any percentage-based pre-deposit for an appeal against a wholly disputed penalty-only order under Section 122. The proviso then in force was confined to appeals against orders passed under Section 129(3) a provision dealing with detention of goods and conveyances at check posts. By the time the Order-in-Original came to be passed, however, the substituted proviso carrying a mandatory 10% pre-deposit on penalty-only orders was already in force. The Petitioners' appeal thus landed precisely on the fault line between the old regime and the new one.

2. The Rival Contentions

A. Case of the Petitioners

The Petitioners' case rested on the proposition that **the right of appeal is a substantive right which vests upon commencement of the *lis***, and carries with it the conditions governing its exercise as they stood on that date. It was contended that the *lis* in the present case commenced with the issuance of the Show Cause Notice by which the Department first asserted personal penal liability against the Petitioners and called upon them to answer the allegations.

Since Section 107(6), as it stood on that date, required no percentage-based pre-deposit for an appeal against a wholly disputed penalty-only order under Section 122, the subsequent substitution imposing a deposit of ten per cent of the penalty materially burdened the appellate remedy and could not govern proceedings already initiated before it came into force.

B. Case of the Revenue

The Respondents took the position that the Petitioners had no enforceable right of appeal until the Impugned Order was passed on 16.12.2025. Since the appeal became available only after the substituted proviso had already come into force, it had to comply with the law prevailing on the date of filing. The earlier proviso, it was argued, stood repealed and replaced upon substitution, and in the absence of any saving provision preserving the earlier regime for proceedings in which only a show cause notice had been issued, the substituted proviso alone governed appeals filed after 1 October 2025.

The Revenue further relied on the fact that the pre-deposit under Section 107(6) is accompanied by an automatic stay of recovery under Section 107(7), and serves the object of discouraging frivolous appeals. Accepting the Petitioners' contention, it was argued, would mean that persons proceeded against under Section 122 prior to 1 October 2025 would escape a pre-deposit obligation that every other appellant under the CGST Act is required to meet.

3. The Statutory Scheme: Section 107(6), Before and After

Section 107 of the CGST Act provides the remedy of appeal against a decision or order passed by an adjudicating authority. Under sub-section (1), any person aggrieved may prefer an appeal within three months of communication of the order, extendable by a further month under sub-section (4) on sufficient cause being shown.

Before 1 October 2025, the proviso to sub-section (6), insofar as relevant, read as follows:

> *"Provided that no appeal shall be filed against an order under sub-section (3) of Section 129, unless a sum equal to twenty-five per cent of the penalty has been paid by the appellant."*

Under this provision, an appellant was ordinarily required to deposit ten per cent of the remaining tax in dispute, and, in the case of an order under Section 129(3), twenty-five per cent of the penalty. Crucially, the provision prescribed no percentage-based pre-deposit for an appeal against a wholly disputed penalty-only order under Section 122.

By Section 129 of the Finance Act, 2025, the proviso to Section 107(6) was substituted with effect from 1 October 2025. The substituted proviso reads:

> *"Provided that in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equal to ten per cent of the said penalty has been paid by the appellant."*

The substitution cuts both ways since for an order under Section 129(3), the deposit requirement actually came down, from twenty-five per cent to ten per cent, however for other penalty-only orders including a wholly disputed penalty under Section 122, the substituted proviso introduced a percentage-based pre-deposit **for the first time**. So while the amendment is beneficial for one category of appellant, it is distinctly more onerous for another, moving the Petitioners' position from no deposit at all to a mandatory ten per cent.

4. Discussion and Findings of the Court

A. Nature and Vesting of the Appellate Right

The Court began from the settled position that the right of appeal is a creature of statute and the legislature that creates it may define its scope, prescribe the forum as well as impose conditions on its exercise. Equally settled, however, is that once a right of appeal vests, it is substantive rather than procedural, and cannot be taken away, impaired, or subjected to a more onerous condition unless the legislature says so expressly or by necessary intendment. The Court held that although an appeal can ordinarily be filed only after an adverse order is passed, the right to pursue the matter through the appellate hierarchy attaches to the *lis* at its commencement, the adverse order merely makes an already-existing right capable of exercise.

B. Commencement of the Lis in the Present Case

Applying this to the facts, the Court held that the relevant event is neither the date of the underlying transactions nor the mere initiation of an investigation and it is the date on which the Department first asserted the liability and called upon the noticee to answer it. That event, the Court found, was the SCN dated 25.06.2025.

The fact that the Petitioners filed their replies and attended the personal hearing after 1 October 2025 did not, in the Court's view, postpone the commencement of proceedings. Those were later steps in an adjudicatory process that had already begun. The Impugned Order simply confirmed the very penalties proposed in the SCN, giving an unbroken continuity between the notice, the adjudication, and the appellate remedy flowing from it. The *lis* commenced on 25.06.2025 itself, a date on which the appellate package carried no percentage-based pre-deposit and the substituted proviso imposed a substantial threshold impediment where none had existed before.

C. Whether the Amendment Discloses a Contrary Legislative Intention

The Court then turned to whether the Finance Act, 2025 displaced this general principle by clear language and found that it did not. Neither Section 129 of the Finance Act, 2025 nor the substituted proviso states that the new condition applies to adjudicatory proceedings already pending on 1 October 2025, and there is no transitional provision marking out which proceedings fall under the old regime and which under the new.

The Court placed heavy reliance on the Supreme Court precedents in ***Hoosein Kasam Dada (India) Ltd. v. The State of Madhya Pradesh*** AIR 1953 SC 221 and ***Videocon International Ltd. v. Securities and Exchange Board of India,***[2015] 53 taxmann.com 245/129 SCL 673 (SC) both of which has settled the controversy earlier in different context but the ratio shall squarely apply here.

The Revenue's reliance on the automatic stay under Section 107(7) was held to be misplaced as that provision prescribes the consequence of compliance with whichever deposit requirement applies to a given appeal and it cannot be used in reverse to decide which version of sub-section (6) applies in the first place. Similarly, the object of discouraging frivolous appeals or securing part of the disputed liability, however legitimate, cannot supply a retrospective operation that the statutory text itself does not contain.

5. The Court's Conclusion

The Court accordingly held that the Finance Act, 2025 does not, either expressly or by necessary implication, subject adjudicatory proceedings initiated before 1 October 2025 to the newly introduced ten per cent deposit in penalty-only cases. The substituted proviso did not govern the appeals arising from the SCN issued prior to that date and the Petitioners' appellate remedy was held to be governed by Section 107(6) as it stood on the date the SCN was issued, free of any percentage-based pre-deposit requirement.

6. Likely Impact on the Large Number of Pending Section 122 Appeals

This is not a judgment confined to the subject petitioner. Proposing penalty under Section 122 has generated a substantial volume of show cause notices under GST regime, many of which were issued well before 1 October 2025 but are now before the appellate forums. For this category of taxpayers, the ruling removes a real financial barrier which can run into substantial sums.

What makes this ruling worth close attention is its insistence on first principles on when an appellate right actually comes into being, and applied them faithfully even though the result meant one class of assessees would, for a period, be exempt from a deposit that others continue to bear. That is precisely how legal principle is meant to operate, irrespective of which side it happens to favour in a given case.