

CWP-47-2025 (O&M)

2025:PHHC:136460-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.47 of 2025

Date of Decision: 25.09.2025

Krishna Maruti Limited

...Petitioner

Versus

Commissioner of State Tax Haryana and others

...Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present:- Mr. Amrinder Singh, Advocate
for the petitioner.

Mr. Sourabh Goel, Addl. AG, Haryana.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside order dated 28.10.2024 (Annexure P-1), passed by Appellate Authority/respondent no.2 – Joint Commissioner of State Tax (Appeals, Gurugram, whereby appeal under Section 107 of Haryana Goods and Services Tax Act, 2017 (for short HGST Act/Central Goods and Services Tax Act, 2017 (for short HGST Act) read with Section 20 of Integrated Goods and Services Tax Act, 2017 (for short IGST Act) filed by petitioner has been dismissed for non-prosecution.

2. Learned counsel for petitioner argues that impugned order passed by appellate authority is absolutely illegal and arbitrary inasmuch as appeal filed by petitioner has been dismissed due to non-prosecution. It is submitted

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that Appellate Authority is enjoined upon to pass an order on merits either confirming, modifying or annulling the decision appealed against. Appellate authority does not have jurisdiction to dismiss the appeal in default or for non-prosecution. At best, appellant can be proceeded *ex-parte*. It is submitted that Section 107 of CGST/HGST Act is *pari materia* to Section 35-C of Central Excise Act, 1944, except that under Section 35-C of Central Excise Act, 1944, Appellate Tribunal has power to remand the matter to concerned authority whereas this is not so under Section 107 of CGST/HGST Act, though this latter aspect is not subject matter of controversy in the present case. Learned counsel has referred to judgment of Hon'ble the Supreme Court in ***Balaji Steel Re-rolling Mills Vs. Commissioner of Central Excise and Customs (2014)16 SCC 360***, to substantiate his case. Reference has also been made to a Division Bench judgment of Patna High Court in ***Purushottam Stores Vs. State of Bihar, 2023(75) GSTL 276 (Pat.)***. It is further submitted that in case an opportunity is provided, petitioner undertakes to remain present through authorized representative or counsel before learned Appellate Authority on all dates as may be fixed to present its case. It is submitted that petitioner should not be victimized for the fault, if any, on the part of counsel. It is thus prayed that this writ petition be allowed and order dated 28.10.2024 (Annexure P-1) be set aside with a direction to appellate authority to decide the matter on merits.

3. Learned counsel for respondent-State has refuted the arguments as raised on behalf of petitioner while submitting that impugned order has been correctly passed as petitioner despite being given three opportunities did

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not come present before appellate authority which has rightly dismissed the appeal for non-prosecution. Dismissal of writ petition is sought.

4. We have heard learned counsel for parties and have carefully perused the entire file with their able assistance.

5. Issue raised for adjudication in this writ petition is as to whether appellate authority has jurisdiction to dismiss an appeal filed under Section 107 of CGST/HGST Act, in default and for non-prosecution. At this juncture, it is useful to refer to judgment of Hon'ble the Supreme Court in **Balaji Steel Re-rolling Mill's** case (supra), wherein question for consideration was as to whether "Customs, Excise and Service Tax Appellate Tribunal had the power to dismiss the appeal for want of prosecution or not". Hon'ble the Supreme Court after referring to Section 35-C of Central Excise Act, 1944 as well as Rule 20 of the Customs Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982, held that the Tribunal did not have any power to dismiss the appeal in default or for want of prosecution in case, appellant was not present/not represented when appeal is taken up for hearing. Section 107(11) of CGST Act is indeed analogous with Section 35-C of Central Excise Act. Section 35-C and Section 107(11) of CGST Act read as under:-

35-C. Orders of Appellate Tribunal.-	Section 107. Appeals to Appellate Authority-
(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a	(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order: Provided that an order enhancing any

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<p>fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.</p>	<p>fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.</p> <p>Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.</p>
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6. Division Bench of Patna High Court in ***Purshottam Store's*** case (supra) held that Appellate Authority is statutorily obliged to dispose of an appeal on merits as this is the specific mandate under Section 107 CGST Act. Co-ordinate Bench of this Court in ***M/s Parle Biscuits Pvt. Ltd. Rudrapur, Uttarakhand vs. State of Haryana and others, 2024-VIL-1330-P&H, Neutral Citation: 2024: PHHC:158627-DB***, has also held that it is binding upon Appellate Authority to have examined the case on merits rather than dismiss it for non-prosecution.

7. A bare reading of Section 107 makes it apparent that Appellate Authority is enjoined upon, after making such further inquiry as may be necessary, to pass an order as it may think just and proper, either confirming, modifying or annulling the decision or order appealed against. Therefore,

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dismissal of appeal for non-prosecution is not an option available on non-appearance of appellant. In the given factual matrix, order dated 28.10.2024 is not sustainable.

8. Keeping in view the facts and circumstances as above, order dated 28.10.2024 (Annexure P-1) is set aside and matter remitted/remanded to Appellate Authority, to decide the same on merits in accordance with law. It is agreed that parties shall appear before Appellate Authority on 18.10.2025.

9. Writ petition is accordingly disposed of.

10. Pending miscellaneous application(s), if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

25.09.2025

Sunil

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No