

# ARTICLES



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## GST Appeal dismissed on the ground of limitation- Any Remedy available for the taxpayer?

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### **Introduction:**

The introduction of the Goods and Services Tax (GST) regime in India has brought about a transformational change in the indirect tax landscape, affecting millions of taxpayers across the country. Like any robust legal framework, GST law provides for the right to appeal against orders passed by tax authorities. However, taxpayers are required to adhere to specified time limits for filing such appeals. There are, nevertheless, occasions when an appeal cannot be filed within the prescribed period for various good reasons. Thousands of Appeals have been dismissed on the ground of limitation by the First Appellate Authority.

Section 107 (1): the Appellant have to file the appeal in Form GST APL 01 within three months of the date of communication of the order passed.

Section 107 (4): If the appeal is not filed within the time period under sub-section (1), the Appellate Authority, if he is satisfied with the sufficient cause, can condone the delay up to a period of one month.

The law does not empower the appellate authority to condone delay beyond the prescribed extended period. The Appeals filed after the expiry are liable to be dismissed as time-barred, regardless of the merits of the case as well as the cause for such delay.

[Interpretation by the Hon'ble Andhra Pradesh High Court on Section 107 \(4\) of the Act and applicability of Limitation Act, 1963:](#)

In Venkateswara Rao Kesanakurti vs. State of Andhra Pradesh (2024) 23 Centax 43 (A.P.), the Hon'ble Andhra Pradesh High Court by placing reliance on the judgements of the Hon'ble Apex

Court in the case of Union of India v. Popular Construction Co. – [2002] 37 SCL 622 (SC) and Singh Enterprises v. CCE – 2008 (221) E.L.T. 163 (S.C.) has held that the period of limitation available under Section 107 of the APGST Act, cannot be extended beyond the period stipulated

therein, Section 5 of the Limitation Act would stand excluded. Hence, the appellate authority under Section 107 of the APGST Act would not have any power to condone the delay in filing an appeal, beyond the period of 30 days as set out in Section 107

(4) of the APGST Act. Accordingly, the Hon'ble High Court has not intervened against the dismissal of the appeal on the ground of filing the appeal beyond the condonable period.

**Is there any solution for this situation or is the taxpayer lost all avenues, and has to pay the adjudicated dues regardless of merits of the case?**

In the case where the Appellate Authority has dismissed the appeal on the grounds of limitation, the doctrine of the merger is inapplicable as the said Order-in- Appeal has dismissed the Appeal, devoid of any merits of the case. So, the Order-in-Original would not get merged with the Order-in-Appeal passed by the First Appellate Authority.

The Hon'ble Apex Court in the case of Raja Mechanical Co. (P) Ltd. vs. Commissioner of C. Ex., Delhi-I 2013 (29) S.T.R. 81 (S.C.) has held that in view of the plethora of decisions of Supreme Court, wherein Court has, categorically, observed 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 orders passed by the first appellate authority.

**Since the Doctrine of Merger is not**

**Applicable in these cases, whether the Order-in- Original can be challenged before the High Court under Article 226 of the Constitution?**

Yes, The above Question of Law was answered by the Hon'ble Andhra Pradesh High Court in the case of Agarwal Iron and Steel Traders vs. Assistant Commissioner of State Taxes (2025) 30 Centax 112 (A.P.) and Kali Shankar Enterprises v. Additional Commissioner 2024 (81) G.S.T.L. 329 (A.P.), has held that a challenge to the original order would be maintainable even if the first appeal has been dismissed on the ground of limitation.

**Conclusion:**

It is settled position in light of Supreme Court judgments in the case of Singh Enterprises v. CCE – 2008 (221) E.L.T. 163 (S.C.), Commissioner of Customs and Central Excise v. Hongo India (P.) Ltd. – 2009 (236) E.L.T. 417 (S.C.) and

Asstt. Commr. (CT), LTU, Kakinada vs. Glaxo Smith Kline Consumer Health Care Ltd. 2020 (36) G.S.T.L. 305 (S.C.), Constitutional Courts cannot interfere with Order in Appeal, if the appeal is dismissed on the ground of limitation.

In these circumstances where the appeal was dismissed on limitation, the taxpayer has to challenge the original order under Article 226 of the Constitution separately, by explaining a sufficient cause for the delay before the Hon'ble Court. Constitutional Courts are empowered to condone the delay in filing the WRIT Petition, as there is no limit prescribed in Article 226 itself & the High Court and Supreme Court are Court of equity, justice, fair and reasonableness.

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