

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 2934/2025

Dee Ess Construction Co

.....Appellant(s)/Petitioner(s)

Through: Mr. Vishal Goel, Advocate.

vs

UT of J&K & Ors.

..... Respondent(s)

Through: Ms. Nazia Fazal, Advocate vice
Ms. Monika Kohli, Sr. AAG.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER
18.10.2025

1. Impugned in this petition filed by the petitioner- Dee Ess Construction Co. under Article 226 of the Constitution of India is an order dated 11.10.2025 passed by the Deputy Commissioner State Taxes (Appeal-Jammu) [**Appellate Authority**] in case titled “**DS Construction Company vs. UT of J&K & Ors.**” whereby the appeal filed by the petitioner under Section 107 of the J&K State Goods & Services Tax Act, 2017 (SGST) read with CGST Act, 2017 has been dismissed being barred by limitation.

2. Issue which is sought to be raised by learned counsel for the petitioner was an issue for consideration in a batch of writ petitions, lead case being WP (C) No.1413/2024 titled “**Dee Ess Construction Co. vs. Union Territory of Jammu & Kashmir and Ors.**” Division Bench of this Court after hearing the counsel for assesseees and learned Advocate General appearing for the Union Territory framed the following questions for adjudication:

“(i)Whether the Appellate Authority under Sub-Section (4) of Section 107 of the Act of 2017 is competent to condone the delay in filing an appeal against a decision or an order passed under the Act by an Adjudicating Authority beyond a period of one month after the expiry of three months’ period prescribed for filing appeal under SubSection (1) of Section 107 of the Act of 2017.

(ii) even if the appellate authority does not have power to condone the delay beyond the period of thirty days as prescribed under Subsection (4) of Section 107 of the Act of 2017, this Court, in the exercise of its extraordinary jurisdiction vested under Article 226 of the Constitution of India, can direct such condonation of delay, if it is satisfied that a case of exceptional nature is made out for such condonation of delay or that the interest of justice would warrant condoning the delay”.

3 The question No.(i) was answered in favour of Union Territory of J&K and against the assessee and it was held that the appellate authority cannot entertain an appeal under Section 107 of the Act of 2017 against a decision or order of the adjudicating authority if it is filed beyond the period of four months from the date of such decision or order is communicated to the person aggrieved.

4 So far as question No.(ii) is concerned, it was held by the Court that the period of limitation are procedural in nature. Therefore, the prohibition contained in Section 107(4) of the Act of 2017 to condone delay beyond one month cannot come in the way of Constitutional Court exercising extraordinary jurisdiction to render substantial justice. Therefore, while a statutory prohibition is a strong consideration to be kept in mind, yet it does not bar the jurisdiction of the High Court to condone the delay if it is of the opinion that application of delay barring statute would result in gross injustice. Each case is, thus, required to be evaluated on its specific facts and circumstances. It is only in cases of an extraordinary and exceptional nature that this Court may be inclined to intervene in its extra-writ jurisdiction and condone the delay, notwithstanding statutory prohibition.

5 In view of the aforesaid legal position, we have examined the impugned order passed by the adjudicating authority, we find that the same is in consonance with law and that the appellate authority had no option but to dismiss the application for condonation of delay.

6. With a view to finding out as to whether the case projected by the petitioner falls in the category of a case of exceptional / extraordinary nature, we have gone through the application for condonation of delay filed before the appellate authority.

7. Para 1 to Para 5 of the application are relevant and are set out below:-

“1. That the appellant is an aged person of 62 years of age suffering from diabetes and high blood pressure and has to undergo regular medical check-ups.

2. That the appellant, not well versed with the computers and online activities is dependent upon his accountant for statutory compliances.

3. That the accountant failed to intimate the appellant about the notices and the appellant was not aware of the notices being issued as the process was totally online and no offline communication was made and hence the appellant not versed with online system was unaware of the proceedings.

4. That the nature of work of the appellant is construction business and for the sake of the business, he has to be out of office and the management of accounts and statutory compliances were entrusted to the accountant who failed to fulfil his duties.

5. Reference is invited to G.V.Infosutions Pvt. Ltd. v/s DCIT(Delhi High Court), wherein the Court is of the opinion that the petitioner's claim of inadvertent mistake by Auditor/Accountant of not filing return timely may be characterized as bona fide and there cannot necessarily be independent proof or material to establish that the auditor in fact acted without diligence.”

8. From a reading of the application for condonation of delay in its entirety, the only reason put forth by the petitioner for the delay is that he is 62 years old, suffers from diabetes and high blood pressure for which he requires regular medical checkups, and that he is completely illiterate and, therefore, unable to access online notices and communications. The petitioner was under no preventive restraint from filing the appeal within the prescribed time. This Court cannot interfere in such a matter.

9. For all these reasons, we do not find any merit and the same is, accordingly, **dismissed.**

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

Jammu
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