HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 4337 of 2026

M/S Surya Prakash Aroma

.....Petitioner(s)

Versus

State Of Uttar Pradesh And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Pranjal Shukla, Priyanshu Kesarwani
Counsel for Respondent(s)	:	C.S.C.

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Pranjal Shukla, learned counsel for the petitioner and Sri Shashikant Mishra, learned Standing Counsel for the State.

2. A joint statement has been made by learned counsel for the parties that they do not propose to file any affidavit and the petition be decided on the basis of the documents available on record. With the consent of the parties, the petition be decided at the fresh stage.

3. The case of the petitioner is that it happens to be a proprietorship firm by the name and style of M/s Surya Prakash Aroma, situated in Bareilly, engaged in business. As per the petitioner, with respect to annual return in Form GSTR-9 for the financial year 2017-18, Input Tax Credit of Rs. 2,21,940/- each under CGST and SGST which was appearing in Column 8A got auto populated, while in Column 6A, where the Input Tax Credit was availed, the petitioner had shown nil Input Tax Credit. A notice in Form GST ASMT-10 dated 25.07.2023 under Section 61 of the Act came to be issued by the third respondent i.e. Assistant Commissioner, State Tax, Jurisdiction Bareilly, Sector-8, Bareilly, Uttar Pradesh with regard to the discrepancies noticed in the returns for the financial year 2017-18, requiring the petitioner to deposit the said amount through Form DRC-03 with interest or to submit explanation. Thereafter, the third respondent issued show cause notice on 19.09.2023 under Section 73(1) of the Act in Form GST DRC-01 referable to the financial year 2017-18, proposing tax of Rs. 4,43,880/- (CGST Rs. 2,21,940/- and SGST Rs. 2,21,940/-) along with interest of Rs. 4,76,728/- and penalty of Rs. 44,388/- totaling to Rs. 9,64,996/- on the allegation that there was a mismatch in the ITC in that regard. However, without affording any opportunity of personal hearing, an assessment order came to be passed by the authority in original on 06.12.2023 against which the petitioner preferred an appeal after a delay of approximately 18 months, which came to be rejected on 04.07.2025 by the authority being the second respondent, Additional Commissioner Grade-II (Appeal-II), State Tax, Bareilly.

4. Questioning both the orders, i.e. the order passed by the authority in original as well as the appellate order, the present petition has been preferred.

5. Learned counsel for the petitioners argues that at this stage, as per instructions received from his client, he is questioning the appellate order while reserving his right to question the order in original as and when the same stand occasioned. Submission is that though there happened to be delay in filing the appeal but the same was unintentional, beyond the control and comprehension, particularly when the petitioner of the petition, who is the sole proprietor of the firm in question, was suffering from cancer. He submits that by a non-speaking order, without considering the veracity of the grounds taken by the petitioner, the appeal has been rejected on the ground that no power is vested with the authority to condone delay beyond 90+30 days. He submits that at least considerations ought to have been bestowed upon the said aspect of the matter, particularly when looking into the hardship and the nature of the illness of the sole proprietor, necessitate condonation of delay. He further submits, on instructions, that the petitioner is agreeable to any condition which the Court may impose in that regard.

6. Sri Shashikant Mishra, learned Standing Counsel who appears for the revenue submits that whatever be, the appeal had been filed beyond the statutory period and further, in view of the provisions under Section 107 of the Act, there is no power to further condone the delay. He further submits that subject to deposit of cost, the appeal be restored and heard on merits.

7. I have heard the submissions made across the bar and perused the record.

8. Plainly and simply, the entire controversy boils down to the fact whether the present facts necessitated condonation of delay or not. What is important in the present case is that the sole proprietor claims himself to be suffering from cancer, medical certificates are also available on record.

9. Be that as it may, it should be the endeavour to decide the matter on merits rather than to throttle the same on limitation. As rightly pointed out by the counsel for the parties, a condition be imposed for condoning the delay in filing the appeal. Thus, without delving any further into the matter, the present petition is being decided in the following terms:-

(a) The order dated 04.07.2025 passed by the Additional Commissioner Grade-II (Appeal-II), State Tax, Bareilly dismissing the appeal on the ground of limitation is set aside;

(b) The appeal is restored to its original number and delay is condoned;

(c) The appellate authority shall hear the appeal on merits and decide the same within a period of three months from the date of production of certified copy of the order;

(d) The petitioner is to deposit Rs. 10,000/- through the window which is available, by **13.11.2026**. Subject to deposit, the appeal shall be decided;

(e) The benefit of the order shall stand extended only when the amount stands deposited.

10. Needless to point out that this Court has not adjudicated on merits.

11. With the aforesaid observations, the present petition stands **disposed of**.

October 28, 2026
Rajesh

(Vikas Budhwar,J.)

Digitally signed by :-
RAJESH KUMAR
High Court of Judicature at Allahabad