

TAX FLASH NEWS

Appellant can pay 10% of the disputed tax either using the amount available in the Electronic Cash Ledger or the amount available in the Electronic Credit Ledger

The Bombay High Court has held that any person aggrieved by the decision of an adjudicating authority may appeal to Appellate Authority after paying 10% of the disputed tax using either the amount available in the Electronic Cash Ledger or the amount available in the Electronic Credit Ledger.¹

Facts of the case

Petitioner(s) filed writ petitions against the order of Appellate Authority, who rejected the appeal since the Petitioners-Appellants did not pay a sum equal to 10% of the amount of tax in dispute arising out of impugned order through cash which is a pre-requisite for filing an appeal under Section 107(6) of the GST Act.

Petitioner(s) contentions

Petitioner contended that it can pay the amount utilising the credit available in Electronic Credit Ledger.

Revenue's contentions

- Appellate can utilise the credit available only in the Electronic Cash Ledger to pay the mandatory amount before appeal since sub-section (4) of Section 49 restricts the usage of the amount available in the Electronic Credit Ledger only for payment of output tax and the amount available cannot be utilised for payment of tax under clause (b) of sub-section (6) of Section 107.

- Reliance was placed on the decision of the Orissa High Court² which held that the amount in the credit ledger cannot be used to pay the pre-requisite amount for an appeal.

High Court's decision

The Bombay High Court allowed the writ in favour of the Petitioners. It held that any aggrieved person can pay 10% of the disputed tax either using the amount available in the Electronic Cash Ledger or the amount available in the Electronic Credit Ledger. Below is the gist of the important inferences pronounced by the Court:

a) Section 107(6)

- Section 107 contains provisions relating to appeals to Appellate Authority. Sub-section 6 of Section 107 does not say anything about '*interest, fine, fee or penalty*'. Therefore, on comparison of clauses (a) and (b) of this section:
 - where there is an *admission* of part of the order and the admission is in relation to tax, interest, fine, fee and penalty, all those amounts will have to be deposited first; and,
 - to the part, which is not admitted, only 10% of the tax in dispute has to be deposited. The deposit will not include interest, fine, fee and penalty.

¹ Oasis Realty, Roma Builders Pvt Ltd and Macrotech Developers Limited v. UOI & Ors [2022-VIL-674-BOM]

² Jyoti Construction Vs Deputy Commissioner of CT & GST, Barbil Circle, Jajpur And Another [2021-VIL-715-ORI]

- The expression used in this sub-section is "unless the appellant has paid". It is a pre-condition to filing an Appeal. The expression used is "paid" and not "deposited". This would be material while considering the provisions of Section 49 (which is titled 'Payment of tax, interest, penalty and other amounts') since the wordings used in this section are "deposit", "used", and "utilised".

b) Section 49(4) vis-à-vis section 107(6)(b)

- The Bombay High Court stated that it is not in agreement with the submission made by the Revenue that sub-section (4) of Section 49 restricts the usage of the amount available in the Electronic Credit Ledger only for payment of output tax and the amount available cannot be utilised for payment of tax under clause (b) of sub-section (6) of Section 107.
- The reasoning of the Bombay High Court in this regard is that clause (b) (supra) provides a pre-condition, "unless the appellant has paid" (not deposited) a sum equal to 10% of the remaining amount of 'tax' in dispute. It says 10% of 'tax' has to be paid as a pre-condition. That tax can be IGST, CGST, SGST or UTGST. The amount of ITC available in the Electronic Credit Ledger can be utilised towards payment of IGST, CGST, SGST or UTGST.

c) Rule 86(2)

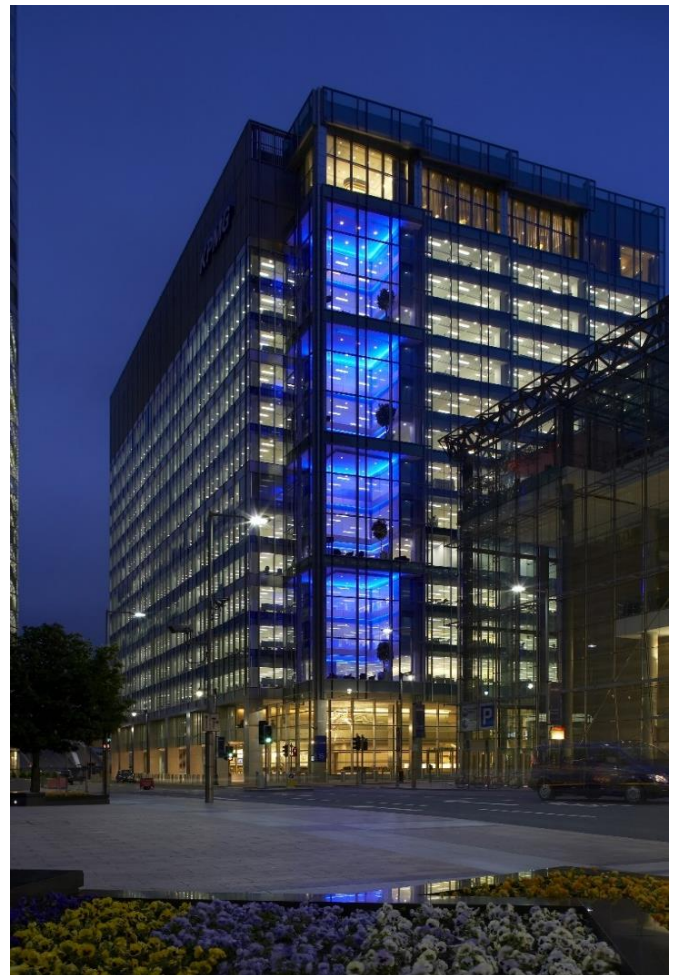
- Rule 86(2) provides for debiting Electronic Credit Ledger to the extent of discharge of any liability in accordance with the provisions of Section 49.
- Any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the Act, can be made by utilising the amount available in the Electronic Credit Ledger.

d) Decision of High Court of Orissa

In view of the Bombay High Court, it will not be necessary to discuss the judgement of the Orissa High Court, since, subsequently, CBIC clarified that any amount towards output tax payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be paid by utilisation of the amount available in the Electronic Credit Ledger of a registered person.

Our comments

This judgement could provide relief to aggrieved persons who have paid the pre-requisite amount for an appeal through an Electronic Credit Ledger falling under the jurisdiction of the Bombay High Court.



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