

TAX FLASH NEWS

14 October 2021



Pre-deposit for an appeal can be paid only through Electronic Cash Ledger

Hon'ble High Court of Orissa has held that the mandatory pre-deposit to file an appeal can be made only through electronic cash ledger and not through electronic credit ledger.¹

Facts of the case

- 'Petitioner' is engaged in the business of execution of works contract including civil, electrical and mechanical.
- Demand was raised by the 'Adjudicating Authority' which resulted in an extra demand for GST. 'Petitioner' filed appeals against the demand before the 'Appellate Authority'.
- 'Appellate Authority' rejected the appeals holding that the appeals filed are defective since the 'Petitioner' had made payment of the pre-deposit being 10% of the disputed amount by debiting its electronic credit ledger (ECRL) and did not pay it from the electronic cash ledger (ECL) which is in contravention of section 49(3) of the GST Act read with rule 85 (4) of the GST Rules, 2017.

Appellant's contentions

- On collective reading of various provisions, the pre-deposit could be made by debiting the ECRL since, as per section 49(4), the amount available in the ECRL could be used for making "any payment towards output tax" "in such manner and subject to such conditions and within such time as may be prescribed".

- Definition of "output tax" under section 2(82) means tax chargeable on taxable supply of goods or services or both made by the taxable person or by its agent but excludes tax payable on reverse charge basis. On this basis, it is contended that since 'Petitioner' in effect, is paying a percentage of the output tax, the amount could well be paid by debiting the ECRL.
- Section 107(6) (pertaining to pre-deposit) is merely a machinery provision and that it must be interpreted purposively to subserve the purpose of collecting the pre-deposit amount which could be done even by debiting the ECRL.

Revenue's contentions

- It is submitted that the pre-deposit cannot be equated to the output tax. Section 41(2) states that ITC can be utilized for payment of 'self-assessed output tax as per the return'. Thus, ITC can be utilized for self-assessed output tax but not to discharge 'any liability'.
- Rule 85(3) states that subject to the provision of section 49, payment of every liability by a registered person as per the return shall be made by debiting the electronic credit ledger maintained as per rule 86 (Section 49 is about payment of tax, interest, penalty and other amounts and rule 86 is about ECRL).
- Reliance is placed on decision of the Supreme Court of India in the case of Shukhdev Singh vs Bhagatram Sardar Singh¹, which mandates that "If Statute provides a thing to be done in a particular manner, then it has to be done only in that manner".

¹ Jyoti Construction vs Deputy Commissioner of CT & GST, Barbil Circle, Jajpur And Another [2021-VIL-715-ORI]

High Court's decision

Hon'ble High Court of Orissa did not find any merits in the contentions of the 'Appellant' and dismissed the writ petitions stating the following:

- It is not possible to accept the plea of the 'Petitioner' that "output tax", could be equated to the pre-deposit required to be made for filing appeal.
- Section 41(2) limits the usage to which the ECRL could be utilized. It cannot be debited for making payment of pre-deposit at the time of filing of the appeal.

Our comments

Form GST APL-01 (table 15(b)) vis-à-vis GST portal allows the option to make payment of pre-deposit for an appeal either through ECL or through ECRL. From cash flow perspective, many taxpayers have opted to pay the pre-deposit amount through ECRL instead of ECL. This judgement might open a Pandora of litigations and merits appeal before the Hon'ble Supreme Court and a clarification from the Government. We need to see if the Tax Authorities, basis this judgement would start rejecting the already filed appeals. Assuming that this judgement prevails, taxpayers could also face uncertainty on the fate of the amount already debited through ECRL.



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