



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10504 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE D.N.RAY

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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M/S YASHO INDUSTRIES LIMITED
 Versus
 UNION OF INDIA & ANR.

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Appearance:

MR BHAVESH B CHOKSHI(3109) for the Petitioner(s) No. 1

MR UTKARSH R SHARMA(6157) for the Respondent(s) No. 1,2

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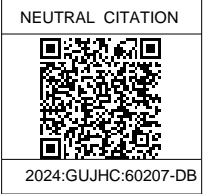
CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE D.N.RAY

Date : 17/10/2024

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr. Abhishek

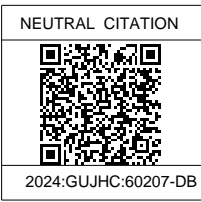


Rastogi for learned advocate Mr. Bhavesh Chokshi for the petitioner and learned advocate Mr. Utkarsh Sharma for the respondents.

2. By way of this petition under Article 226 of the Constitution of India, the writ applicant has approached this Court with the following reliefs:

"a. issue an appropriate writ of mandamus or any other writ, order or direction quashing and setting aside the impugned Letter dated 25.04.2023 (Annexure B) insofar as it has been issued arbitrarily and in violation of Article 14 of the Constitution;

b. direct respondents to consider the amount of INR 3,36,82,000/- paid by the petitioner company, towards the mandate of pre-deposit, vide Form GST DRC 03 dated 09.02.2021 and 26.12.2022 is sufficient compliance



of section 107(6) (b) of the CGST Act and corresponding provisions of the IGST Act;

c. pending final hearing and disposal of this petition, restraint the respondents from passing any final orders in relation to appeal No. 11/GST/CP/22-23 dated 28.12.2022, preferred by the petitioner company before Commissioner (Appeals) CGST & Central Excise Appeals Commissionerate, Surat;

d. alternatively, direct respondents to refund INR 3,36,82,000/- paid vide Form GST DRC-03 dated 09.02.2021 and 26.12.2022 (Annexure A);

e. grant ex parte ad interim relief in terms of prayer clauses (c); and

f. grant any other and further relief which this Hon'ble Court may deem fit



and proper in the facts of the present case.”

3. The brief facts leading to filing of the present petition can be stated as under:

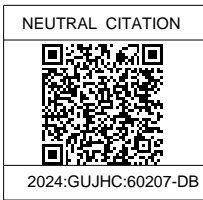
3.1 The petitioner is public limited company engaged in the business of manufacturing and exporting specialized chemicals such as aroma chemicals, food antioxidants, rubber chemicals and lubricant additives. A substantial portion of the petitioner's products is also exported resulting in significant contribution to the foreign exchange earnings of the country.

3.2 During 28.02.2018 to 14.01.2021, the petitioner company was availing refund of IGST paid on exports



in terms of section 16(3)(b) of the Integrated Goods and Services Tax Act, 2017 ['IGST' Act for short] as it stood prior to its omission by Finance Act, 2021 besides the IGST exemption conferred by Notification No. 79/2017-Cus dated 13.10.2017 on import of raw materials incorporated in the manufacture of export/exported goods on the strength of validity issued Advance Authorization Licenses.

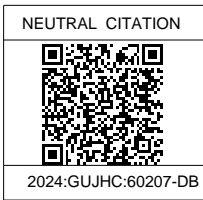
3.3 The petitioner company was precluded from availing benefits of rebate in terms of section 16(3)(b) of the IGST Act if imported goods enjoyed exemptions conferred by NN 79/2017 since 09.10.2018 vide introduction of Rule 96(10) of the Central Goods and Services



Tax Rules,2017 ['CGST' Rules for short]
read with Notification No. 54/2018-CT
dated 09.10.2018.

3.4 Aggrieved by the arbitrariness
of the aforesaid precluding provision and
corresponding notifications, the
petitioner had preferred a writ petition
before the Bombay High Court bearing W.P.
(L) No. 8839/2020 which is pending.
Parallely, the petitioner was compelled
to depart from INR 3 Crore and reverse,
"under protest", the input tax credit
equivalent to INR 3 Crore vide Form GST
DRC-03.

3.5 Thereafter, the respondent
continued to pursue their investigation
and as a consequence thereof searches



were conducted at the premises of the petitioner-company. Thereafter, after recording the statement of Director of the company and upon completion of the investigation, a show cause notice dated 16.03.2022 was issued demanding the refunded IGST in terms of section 16(3) (b) of the IGST Act along with interest and penalty.

3.6 The petitioner vide detailed reply dated 23.05.2022 and personal hearings dated 19.07.2022 and 10.08.2022 submitted that the matter was revenue neutral, reversal of IGST exemption for the period from October 2019 to September, 2021 had been effectuated in absence of any contravention of Rule 96(10) of CGST Rules. However, the



respondents vide order dated 20.09.2022 had confirmed the show cause notice dated 16.03.2022 demanding of tax, penalty and interest.

3.7 Aggrieved by the aforesaid order, the petitioner had preferred appeal before the Commissioner (Appeals) bearing No. 11/GST/CP/22-23 and also deposited the pre-deposit amount to the tune of Rs. 3,36,82,000/- in compliance of section 107(6)(b) of the CGST Act utilizing the amount available in the Electronic Credit Ledger vide Form GST DRC-03 dated 26.12.2022. However, the respondent No.2 vide impugned letter 25.04.2023 directed the petitioner to pay the pre-deposit through Electronic Cash Ledger and also directed to produce the



relevant proof regarding the same before or at the time of attending the personal hearing in the matter.

Being aggrieved by the aforesaid letter, the petitioner approached this Court by way of present petition.

4. Learned advocate Mr. Rastogi for the petitioner stated that the issue is squarely covered by the decision of this Court dated 30.11.2023 in Special Civil Application No. 22979 of 2022. It was submitted that the similar order is required to be passed in this petition.
5. In view of the above, it would be germane to reproduce the relevant paras of order dated 30.11.2023 passed by this Court which read as under:



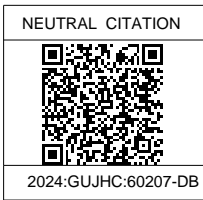
"10. Having heard the learned advocates appearing for the respective parties and having gone through the material produced on record, the only question that falls for the consideration of this Court is whether the appellant, to comply with the requirement of sub-section (6) of Section 107 of the CGST Act of paying a sum equal to 10% of the amount of tax in dispute arising out of the impugned order, can pay the amount utilizing the credit available in the Electronic Credit Ledger?

11. In our considered opinion, the aforesaid question is no more res integra. The Hon'ble Bombay High Court in the case of Oasis Realty (supra), having considered the relevant provisions, held as under:

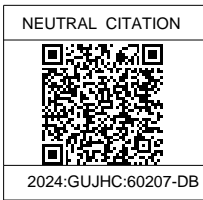


"9. We are not in agreement with the submission made on behalf of the State. This is because clause (b) of Sub-section (6) of Section 107 provides a precondition, "unless the appellant has paid" (not deposited) a sum equal to 10% of remaining amount of Tax in dispute. It says 10% of Tax has to be paid as a precondition. That Tax can be Integrated Tax or Central Tax or the State Tax as in the case at hand, or Union Territory Tax. The amount of ITC available in the Electronic Credit Ledger can be utilised towards payment of Integrated Tax or Central Tax or State Tax or Union Territory Tax.

Therefore, in our view, Petitioner having to pay 10% of the Tax in dispute under clause (b) of Sub-section (6) of Section 107, can certainly utilise the amount of ITC available in the Electronic Credit Ledger. We hasten to add that in view of provisions of Subsection (3) of Section 49, the party may also pay this 10% of the Tax in dispute by utilising the amount available in the cash ledger.



10. Moreover, Sub-section (4) of Section 49 provides the amount available in the Electronic Credit Ledger may be used for making any payment towards output tax under the MGST Act or IGST Act subject to certain restrictions or conditions that may be prescribed. Sub-rule (2) of Rule 86 of MGST Rules provides for debiting of the Electronic Credit Ledger to the extent of discharge of any liability in accordance with the provisions of Section 49 of the MGST Act. Further, output tax in relation to a taxable person is defined in Clause (82) of Section 2 of MGST Act as the tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism. Therefore, any payment towards output tax, whether self-assessed in the return or payable as a consequence of any



proceeding instituted under the MGST Act can be made by utilisation of the amount available in the Electronic Credit Ledger. Hence, a party 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.

Ms. Chavan relied upon an order of the High Court of Orissa at Cuttack in M/s Jyoti Construction Vs. Deputy Commissioner of CT & GST 2021(10) TMI 524 to submit that the amount in the credit ledger cannot be used to pay the 10% required to be paid under Sub-section (6) of Section 107 of the MGST Act. In our view it will not be necessary to discuss the said order because subsequent to the said order the Central Board of Indirect Taxes and Customs,



GST Policy Wing, Department of Revenue, Ministry of Finance, Government of India (CBIT&C) has, in exercise of its powers conferred by Section 168(1) of the Central Goods and Services Tax Act, 2017, issued clarification in the form of a circular. This clarification came to be issued in view of various representations that CBIT&C received on utilisation of the amounts available in the Electronic Credit Ledger and the Electronic Cash Ledger for payment of tax and other liabilities. The CBIT&C, in its circular F. No.CBIC-20001/2/2022-GST dated 6th July 2022 has clarified as under:-

Utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities.	
XXXXXXXXXX	
6	<p>Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?</p> <p>1. In terms of sub-section (4) of section 49 of CGST Act, the amount available in the electronic credit ledger may be used for making any payment</p>



	<p>towards output tax under the CGST Act or the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act"), subject to the provisions relating to the order of utilisation of input tax credit as laid down in section 49B of the CGST Act read with rule 88A of the CGST Rules. 2. Sub-rule (2) of rule 86 of the CGST Rules provides for debiting of the electronic credit ledger to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B of the CGST Act. 3. Further, output tax in relation to a taxable person (i.e. a person who is registered or liable to be registered under section 22 or section 24 of the CGST Act) is defined in clause (82) of section 2 of the CGST Act as the tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism. 4. Accordingly, it is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person. 5. It is further reiterated that as output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment of any tax which is</p>
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		payable under reverse charge mechanism.
7	Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under GST Laws?	As per sub-section (4) of section 49, the electronic credit ledger can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.
8	Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST Laws?	As per sub-section (3) of Section 49 of the CGST Act, the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws.

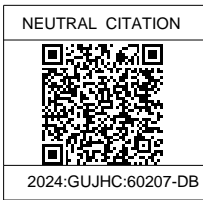
Therefore, CBIT&C has itself clarified that any amount towards output tax payable, as a consequence of any proceeding instituted under the provisions of GST Laws, can be paid by utilisation of the amount available in the Electronic Credit Ledger of a registered



person. The CBIT&C has also requested that suitable trade notices be issued to publicize the contents of the circular.

12. Keeping in mind the ratio laid down by the Hon'ble Bombay High Court in the case of Oasis Realty (supra) as well as the circular dated 6th July 2022 issued by the GST Policy Wing, Central Board of Indirect Taxes and Customs, Ministry of Finance, Government of India, it has been clarified that the payment of predeposit can be made by utilizing the Electronic Credit Ledger (ECL).

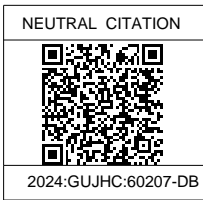
13. In view of the aforesaid, we hold that the the petitioner may utilize the amount available in the Electronic Credit Ledger to pay the 10% of Tax in dispute as prescribed under sub-section (6) of Section 107 of the CGST Act. Accordingly, the impugned



order-in appeal No.
CR/ADC/APL/147/2022 dated 25th
July 2022 passed by the
respondent No.2 is hereby quashed
and set aside. The appeal is
restored to file on the
undertaking of the petitioner
that it shall debit the
Electronic Credit Ledger within
two weeks of this order getting
uploaded towards this 10% payable
under Section 107(6) (b), if not
already debited, is accepted.

14. The petition is disposed of
accordingly.”

6. Considering the facts of the present
case, the amount paid by the petitioner
as pre- deposit in compliance of section
107(6) (b) of the CGST Act utilizing the
amount of Electronic Credit Ledger is
required to be considered valid and



impugned letter dated 25.04.2023 issued by the respondent No.2 directing the petitioner to pay pre-deposit amount through Electronic Cash Ledger is therefore, hereby quashed and set aside. Therefore, the appeal filed by the petitioner is required to be heard on merits by considering the payment of pre-deposit by the petitioner from Electronic Credit Ledger as a sufficient compliance of the provisions of section 107(6)(b) of the CGST Act. The petition is accordingly disposed of.

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

JYOTI V. JANI