

Amount paid under protest prior to assessment can be adjusted against pre-deposit for filing an appeal – SC

17 December 2021



Summary

The Supreme Court (SC) has held that the amount of tax paid under protest can be adjusted against the mandatory pre-deposit required for filing an appeal under the erstwhile VAT law. The SC stated that the provisions of a taxing statute must be construed as they stand, adopting the plain and grammatical meaning of the words used. In the absence of express restriction under the statute, the amount paid under protest cannot be excluded for the purpose of computing mandatory pre-deposit payable.

Facts of the case

- The petitioner¹ is engaged in the manufacture and sale of oleo-chemicals and personal care products. Investigation was conducted at premises of appellant and a notice imposing tax, interest and penalty was issued. The petitioner had paid tax and interest under protest for assessment year 2013-14.
- An order of assessment was passed under the Maharashtra Tax on the Entry of Goods into Local Areas Act 2002. An appeal was filed against the order of assessment after adjustment of the amounts paid under protest by the appellant. The appeal was rejected by the appellate authority on the ground that the payments which were made under protest could not be considered towards pre-deposit².
- A petition was instituted to challenge the said rejection before the Bombay High Court (HC). The Division bench of the HC dismissed the petition stating that once an order of assessment has been passed, any amounts which have been paid though under protest, would have to be adjusted against the total tax liability and the demand to follow. Hence, the view of the High Court was that the appellant was duty bound to deposit 10 per cent of the total tax demand after adjusting the amount which had already been paid under protest, prior to the order of assessment.
- Therefore, the petitioner filed present Special Leave Petition (SLP) before the SC³.

¹ VVF (INDIA) LIMITED

² U/s 26(6A) of the Maharashtra Value Added Tax Act, 2002

³ SLP(C) No 28607 of 2019

SC observations and ruling⁴:

- **Taxing statute to be construed strictly and literally:** As per the relevant provision whole undisputed amount and 10% of disputed amount of tax is required to be deposited by appellant along with proof of payment. There is no express restriction under the law providing that amount paid under protest cannot be considered while computing pre-deposit payable. In absence of statutory language to that effect, the amount deposited by appellant prior to order of assessment cannot be excluded from consideration.
- **Provisions duly complied by appellant:** The provisions of a taxing statute must be construed as they stand, adopting the plain and grammatical meaning of the words used. The appellant was required to pay 10% of amount of tax disputed and there is no reason why amount paid under protest should not be taken into consideration. Therefore, as the provisions were duly complied by the appellant, rejection of appeal by the Bombay HC was not in order.
- **Appeal allowed:** The SC held that the rejection of the appeal was not in order and needs to be restored subject to verification of deposit of 10

per cent of disputed tax. Accordingly, the appeal filed by the petitioner was allowed and the order of the Bombay HC was set aside.

Our comments

The Bombay HC had earlier held that when the appeal is against a tax liability, the petitioner cannot contend that because a part amount was deposited under protest that should be adjusted against the pre-deposit. Such adjustment shall mean that the appeal would be entertained even if there was no proof of payment of pre-deposit.

The Apex Court has set aside the order of the Bombay HC and held that the amount deposited under protest can be adjusted against the amount of mandatory pre-deposit under the erstwhile VAT law. Thus, this a landmark judgement and shall provide required relief to the taxpayers on similar issue. Further, an analogy can also be drawn under the GST regime since similar provisions exist even under the GST law.

⁴ Order dated 3 December 2021

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI

National Office,
Outer Circle, L 41,
Connaught Circus,
New Delhi - 110001
T +91 11 4278 7070

NEW DELHI

6th Floor, Worldmark 2,
Aerocity,
New Delhi - 110037
T +91 11 4952 7400

BENGALURU

5th Floor, 65/2, Block
A, Bagmane Tridib,
Bagmane Tech Park,
CV Raman Nagar,
Bengaluru - 560093
T+91 80 4243 0700

CHANDIGARH

B-406A, 4th Floor,
L&T Elante Office Building,
Industrial Area Phase I,
Chandigarh - 160002
T +91 172 4338 000

CHENNAI

9th Floor, A Wing, Prestige
Polygon, 471 Anna Salai,
Mylapore Division,
Teynampet,
Chennai – 600035
T +91 44 4294 0000

DEHRADUN

Suite No 2211, 2nd Floor,
Building 2000,
Michigan Avenue,
Doon Express Business
Park, Subhash Nagar,
Dehradun - 248002
T +91 135 2646 500

GURGAON

21st Floor,
DLF Square, Jacaranda
Marg,
DLF Phase II,
Gurgaon - 122002
T +91 124 462 8000

HYDERABAD

7th Floor, Block III,
White House,
Kundan Bagh,
Begumpet,
Hyderabad - 500016
T +91 40 6630 8200

KOCHI

6th Floor,
Modayil Centre Point,
Warriam Road Junction,
MG Road
Kochi - 682016
T +91 484 406 4541

KOLKATA

10C Hungerford Street,
5th Floor,
Kolkata - 700017
T +91 33 4050 8000

MUMBAI

11th Floor, Tower II,
One International Center,
SB Marg Prabhadevi (W),
Mumbai - 400013
T +91 22 6626 2600

MUMBAI

Kaledonia, 1st Floor,
C Wing,
(Opposite J&J Office),
Sahar Road,
Andheri East,
Mumbai - 400069
T +91 22 6176 7800

NOIDA

Plot No 19A, 2nd Floor,
Sector - 16A,
Noida - 201301
T +91 120 485 5900

PUNE

3rd Floor,
Unit No 309-312,
West Wing, Nyati Unitree,
Nagar Road, Yerwada
Pune - 411006
T +91 20 6744 8800

For more information or for any queries, write to us at gtbharat@in.gt.com



Follow us @GrantThorntonIN

© 2021 Grant Thornton Bharat LLP. All rights reserved.

“Grant Thornton Bharat” means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly Grant Thornton India LLP, is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001. References to Grant Thornton are to Grant Thornton International Ltd. (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.