

Pre-deposit for filing an appeal under GST can be made by utilising electronic credit ledger - Bombay HC

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Summary

The issue before the Bombay High Court (HC) is whether an appellant can utilise the input tax credit (ITC) balance lying in the electronic credit ledger (ECrL) to pay the pre-deposit for filing an appeal before the appellate authority (AA). In this regard, the HC noted that section 49(4) of the Maharashtra Goods and Services Tax Act, 2017 (MGST Act) allows payment of tax through the ITC balance in the ECrL. As a result, the pre-deposit for filing an appeal can be done by debiting the ITC balance in the ECrL. Further, the Central Board of Indirect Taxes & Customs (CBIC) clarified vide the circular 172/04/2022-GST dated 6 July 2022 (the circular) that output tax payable as a result of proceedings instituted under the GST laws can be paid by utilising the ITC balance in the ECrL.

Facts of the case

- M/s Oasis Reality (the petitioner) has a view that the pre-deposit of disputed tax as required under Section 107(6) of the MGST Act can be paid using the amount available in ECrL. The revenue, on the other hand, has a contrary view that petitioner can use only the balance available in an electronic cash ledger (ECL). According to the revenue, section 49(4) limits the use of the amount available in the ECrL to pay output tax under MGST or Integrated Goods and Services Tax (IGST). It cannot be used to make payment of tax as pre-deposit before filing an appeal.
- The issue before the HC is whether an appellant can utilise the ITC balance available in the ECrL to pay the pre-deposit for filing the appeal before the AA.

Bombay HC observations and ruling [Writ Petition (ST) No. 23507 of 2022, Order dated 16 September 2022]

- **Clarification provided by the CBIC:** The HC, relying on the circular, differentiated the Orissa HC's decision in Jyoti Construction. The HC further noted that the CBIC has itself clarified that any amount payable towards output tax, as a result of any proceeding instituted under the provisions of GST laws, can be paid by utilising the amount available in ECrL. However, ECrL cannot be used to pay any tax which is payable under reverse charge mechanism.
- **Pre-deposit amount can be paid through ECrL:** The HC noted the word used in Section 107(6) of the MGST Act i.e., paid rather than deposited. Further, pre-deposit of tax in dispute is a pre-condition for filing an appeal where tax can be integrated tax, central tax, state tax, or union territory tax. The HC further noted that according to section 49(4), the amount available in the ECrL may be utilised to make any payment towards output tax under the MGST Act or the Integrated GST Act, subject to the prescribed restrictions or conditions. As a result, the HC held that the petitioner can certainly utilise the amount available in ECrL for pre-deposit of tax in dispute.

Our comments

The mode of payment of the mandatory pre-deposit before filing an appeal under the GST regime has been a litigated issue.

Earlier, in case of Jyoti Construction, the Orissa HC had held that for the purpose of filing an appeal under Section 107, the mandatory pre-deposit can be paid by way of debiting the ECL and not the ECrL.

In contrast to the above, the CBIC recently issued a favourable circular clarifying that payment towards output tax, whether self-assessed in the return or payable as a result of any proceeding, can be made by utilising the amount available in a registered person's ECrL.

Even in the matter of M/s Tulsi Ram and Company, the Allahabad HC relied on this circular and ruled that the AA cannot not compel the business to make a pre-deposit through the ECL. The present ruling is likewise consistent with the circular and may help in reduction of disputes/litigations on similar matters.

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