



## CVO CA UPDATES

### CASE LAW UPDATE

Compiled by CA Nihar Dharod

***Jyoti Construction V/s Deputy Commissioner of CT & GST, Jaipur  
[W.P. Nos. 23508, 23511, 23513, 23514 & 23521 of 2021]  
Orissa High Court (7<sup>th</sup> October, 2021)***

#### ❖ Summary –

- Payment of pre-deposit u/s. 107(6) cannot be equated to Output Tax defined u/s. 2(82) of the CGST/SGST Act ('the Act').
- Payment of pre-deposit for appeal cannot be made from Electronic Credit Ledger ('ECRL') but has to be made from Electronic Cash Ledger ('ECL').

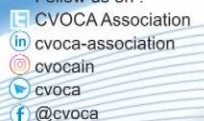
#### ❖ Facts –

- Assessee was a registered taxpayer and orders were issued by the adjudicating authority which resulted in demand for tax (IGST, CGST & SGST) and interest.
- Assessee filed an appeal against the said orders before the Commissioner (Appeals), making payment of mandatory pre-deposit of 10% of the disputed tax amount by debiting the ECRL (instead of ECL).
- The Commissioner (Appeals) found such payment of pre-deposit by debiting ECRL to be defective and rejected the appeals on that ground.
- Being aggrieved by the said rejection, the Assessee filed Writ Petitions before the Hon'ble High Court of Orissa.

#### ❖ Taxpayers Argument –

- Section 49(4) of the Act states that amount available in the ECRL may be used for making 'any' payment of output tax.
- Section 2(82) of the Act defines Output Tax as 'tax chargeable under this Act on taxable supply of goods or services or both" made by the taxable person or his agent but excludes tax payable on reverse charge basis'.

Follow us on :





## CVO CA UPDATES

### CASE LAW UPDATE

#### ❖ Taxpayers Argument (Ctd.) –

- The mandatory pre-deposit of the disputed tax liability u/s. 107(6) of the Act is effectively nothing but a part payment of the output tax liability by the Assessee.
- Section 107(6) of the Act is merely a machinery provision and that it must be interpreted purposively to sub-serve the purpose of collecting the pre-deposit amount which could be done even by debiting the ECRL.
- Without prejudice to the above, in case the taxpayer is required to make pre-deposit payment through ECL, then amount paid through ECRL ought to be reversed to taxpayer's ECRL before making payment through ECL.

#### ❖ Department`s Argument –

- Section 49(3) of the Act provides for liability payments from the ECL whereas Section 49(4) provides for liability payments from ECRL.
- Section 41(2) of the Act specifically restricts the utilisation of input tax credit for the payment of self-assessed output tax as per the return.
- Section 59 of the Act defines self-assessment under GST as declaration of tax liability by the taxpayer in his return u/s. 39 (i.e. GSTR-3B).
- Further, Rule 85(3) of the CGST/SGST Rules also states that payment of liability as per returns shall be made by the taxpayer from ECRL.
- Relying on certain decisions of the Hon'ble Supreme Court, Department also argued that Input Tax Credit was a concession given under the law and utilisation of the same has to be made as provided in the statute.

#### ❖ Judgement –

- Pre-deposit u/s. 107(6) of the Act cannot be equated to the Output Tax u/s. 2(82) of the Act.
- Section 41(2) of the Act limits the usage of the input tax credit and hence the same cannot be used towards payment of the pre-deposit u/s. 107(6) of the Act.
- The making of the pre-deposit by the taxpayer (from ECL) is not contingent upon the reversal of the payment made from the ECRL. The taxpayer ought to make pre-deposit payment through ECL and seek independent remedies under the law for the reversal of payment made through ECRL.



## CVO CA UPDATES

### CASE LAW UPDATE

#### ❖ Author`s View –

- The Hon`ble High Court of Orissa has opined on the limited area of whether the 10% pre-deposit of the disputed tax amount could be considered as output tax liability for utilisation of balance in ECRL.
- It is relevant to note that the judgment does not refer to CBIC Circular No. 42/16/2018-GST dated 13th April, 2018 and Circular No. 58/32/2018-GST dated 4th September, 2018, wherein the Board has allowed the payment of past liabilities relating to credit by way of debit to ECRL. Further, the Hon`ble CESTAT Bangalore has in the case of Dell International Services India Pvt. Ltd. vs CCT [2019 (365) ELT 813 (T-Bang)] allowed payment of pre-deposit to file appeal by way of debit to the ECRL (in view of the above-mention circulars). It is not known, whether the above mentioned circulars and judgment were relied on in the present matter before the Hon`ble High Court of Orissa.
- Further, Industry will now have to be mindful of such narrow interpretation while making any payment from the ECRL for cases other than liability disclosed in the return.
- In the meanwhile, the issue ought to be raised before the GST Council/CBIC for seeking policy level clarification on the matter. It can be hoped that suitable clarifications for allowing utilisation of balance in ECRL for purposes other than the liability reported in returns could be issued (in line with its previous clarifications).

Disclaimer: The views / opinions expressed in the update are purely of the compiler. The readers are requested to take proper professional guidance before abiding the views expressed in the update. Association disclaims any liability in connection with the use of the information mentioned in the update.

Follow us on :

