GSTAT

Court No. Court I

Filing No 2026056101000237

VENSHIV CHEMICALS PVT LTD **.....Appellant**

Versus

N. J. KUMARESH, THE PRINCIPAL COMMISSIONER OF CENTRAL TAX, OFFICE OF THE PRINCIPAL COMMISSIONER OF CENTRAL TAX HYDERABAD GST BHAVAN BASHERBAGH HYDERABAD & ORS. **.....Respondent**

Counsel for Appellant	**Counsel for Respondent**
ONE TAX SOLUTIONS	SHRI BALA NARAYANA AND
SHRI P. NARASIMHA MURTHY	SHRI MOHD. KHALID

Hon'ble Sushil Kumar Sharma, Member(Judicial)
Hon'ble Duvvuri Krishna Srinivas, Member (Technical)

INTERIM ORDER

Shri Narasimha Murthy appeared for the Appellants.

Shri Balanarayana and Shri Khalid appeared for the Respondents.

Per Shri D.K. Srinivas, Technical Member

1. Appeal came up for consideration on the question of admission.
2. The Registry has issued notice to the Appellant for rectification, pointing out that they have not made statutory pre-deposit.
3. We heard the Ld. counsel for the Appellant as well as DRs for the Respondents.
4. Briefly, the facts are, the Appellant is served with Show Cause Notice containing **12 allegations** under various sections of CGST Act, 2017 (herein after referred to as "the Act") alleging that Appellant has claimed irregular ITC, non-paid taxes due, irregular availment of Tran credit etc. The Adjudicating Authority confirmed nine demands and dropped three demands and also demanded interest and imposed penalties as applicable. The Appellant preferred appeal to the Ld. First Appellate Authority against the said OIO. The Ld. First Appellate Authority modified the order and in 7 cases upheld the demands / interest / penalties and set aside two

demands. Against this Appellate Order, the Appellant has preferred the present appeal.

5. The question before us at the admission stage is whether the Appellant is required to make statutory pre-deposit for admission of the appeal.
6. The Ld. Counsel for the Appellant has submitted that the Order in Original, dated 22.12.2023 has appropriated an amount of Rs. 83,43,942/- at para 55(e), which is more than 10% of the required pre-deposit mandated under Section 112(8) of the CGST / SGST Act, 2017 and the same is in dispute and in contest. Hence, he requested that the appropriated amount may be considered as pre-deposit for appeal filed before the Hon'ble GSTAT.

Vide letter 06-08-2026, the Counsel has further submitted that the First Appellate Authority considered the said amount as pre-deposit and admitted the appeal, and decided the case on merits. Hence, the above aspect indicates that the said amount can be considered as disputed amount and the appropriated amount is liable to be considered as pre-deposit. In support of their contention, they submitted a copy of decision of Hon'ble Supreme Court in case of VVF (India) Ltd. Vs the State of Maharashtra and Others in 2021 (12) TMI 477.

7. In response, the Departmental Representative has submitted a letter dated 11.08.2026 contending that :

"self-assessed liability on belated payment of taxes was paid by the Appellant before adjudication was towards discharge of the admitted tax liability. The adjudicating authority merely appropriated amount already paid against the demand confirmed in the OIO. Such appropriation only adjusts the payment against the tax liability and does not change the nature of payment to statutory pre-deposit".

8. We have pursued the matter. The main contention appears to be whether the amount of Rs.83,43,942/- paid during the investigations, should be treated as admitted liability or disputed liability, and consequently, the requirement of further payment of pre-deposit under Sec.112(8) of the Act. For better understanding, various averments made during the Adjudicatory and Appellate proceedings are chronologically discussed as follows (pertaining to issue of payment of Rs.83,43,942/-);

- In the concerned SCN No. 32/2022 dated 21.06.2023, at para 4, it was stated that the tax payer has filed statutory returns GSTR-3B, belatedly, during the period 2017-18 and 2019-20 resulting in delayed payments of GST during the respective tax periods. The tax payer is required to self-assess the tax liability under Sec.59 of the

Act and file a return under Sec.39 of the Act. Further, the tax payer failed to pay the applicable interest on such delayed payment of tax under Sec.50(1) of the Act, on cash portion. At para 18 of SCN (supra) the demands were crystalised as (i) demand of Rs. 83,43,942/- under Sec.73 of Act read with Sec. 20 of IGST Act 2017. (ii) proposal for appropriation of Rs. 83,43,942/- paid belatedly against above demand (iii) demand of interest of Rs. 19,242/- on the amount mentioned above, and (iv) invoking penalty provisions under Sec.122 (2)(a) of the Act read with Sec.73 of the Act.

- In the reply to SCN dated 07.09.2023, the appellant has accepted the demand for payment of interest (Rs.19,242/-) on delayed filing of GSTR-3Bs for the period from 2017-18 to 2019-20 and agreed to discharge the interest payable. Further, it appears that Appellant, neither contested, nor raised any dispute about the demand and appropriation of Rs. 83,43,942/- in his replies.
- At para 4 of OIO concerned, the allegations made in concerned SCN were taken into consideration and at para 19, the submissions were discussed. After discussions, the Adjudicating Authority has concluded that, "**notice is agreed to the contention and would discharge the interest payable"** with regard to demand of Rs. 83,43,942/-
- In the grounds of appeal, filed before the First Appellate Authority, at para 4(2), the Appellant has submitted that "there is no scope to demand the amount already paid in GSTR-3B through the notice ……. **If the amount self-assessed tax is paid belatedly, the interest liable to be paid. The appellant had admitted to pay interest and the question of imposing penalty does not arise"** . It is to be noted that the Appellant in his grounds of appeal before First Appellate Authority has admitted the tax and interest liabilities, but contested only, imposing penalty on such demand.
- In the statement of facts filed along with the present appeal at para 3, the appellant has submitted that "**with regard to difference in tax payable as per GSTR-1 vis-à-vis GSTR-3B, the appellant has decided to pay the same"** and with regard to imposition of interest, has submitted that **"the Appellant has agreed to the contention and would discharge the interest payable".**
- Further, in the grounds of appeal filed along with the present appeal, at para 3(g), the Appellant has submitted that "the Appellant submits that they had paid the GST belatedly through GSTR-3B and that the **same was paid voluntarily**, in other words, the **GST was paid belatedly and returns were filed on their own".**

9. From the factual narration as in para 8 above, it appears that:

(a) The amount of Rs. 83,43,942/- was pointed out during Audit / investigations as non-payment of duty and non-filing of concerned returns. The Appellant has filed the statutory GSTR-3B returns (monthly) and paid tax belatedly, when investigations were going on.

(b) Payment of Applicable interest for the belated payment of tax was also agreed upon by the Appellant for payment subsequently during proceedings before Adjudicating Authority and First Appellate Authority.

(c) The GSTR-3B returns are to be filed under provisions of Sec.59 of CGST Act, 2017 which mandates every registered person to **self-assess the tax payable** and furnish the return for each tax period as specified under Sec.39.

(d) Sec.39 mandates every registered person to furnish a return electronically containing details of inward, outward supply of goods or services, input tax credit availed, **tax payable and tax paid** and such other particulars in such form and manner.

(e) From the submissions of the party, before the Adjudicating Authority and Appellate Authority, it appears that they have accepted the demand of Rs.83,43,942/- during investigations and paid the same through GSTR-3Bs filed belatedly.

(f) While contending against the imposition of penalty, in the grounds of appeal, the Appellant has clearly stated that **it is a voluntary payment**, hence no penalty under Sec.73 is imposable (refer para 8 supra). This is contradictory to their averment that same is in dispute and in contest before the Bench in admission proceedings.

10. The relevant extracts of both the provisions relevant for the pre-deposit under CGST Act 2017 are reproduced below.

"Section 112 Appeals to Appellate Tribunal:-

……...

(8) No appeal shall be filed under sub-section (1), unless the appellant has paid (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to ten per cent of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, subject to a maximum of twenty crore rupees in relation to which the appeal has been filed.

……

"Section 107. Appeals to Appellate Authority:-

……

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty crore rupees, in relation to which the appeal has been filed.

11. The counsel for the Appellant has relied on the judgement of Hon'ble Supreme Court in case of VVF (India) Limited vs. State of Maharashtra (supra) in support of his arguments of disposing of the pre-deposit. In this judgement, the Hon'ble Supreme Court has taken up the issue of "whether amounts deposited **under protest** before the assessment order could be adjusted towards the mandatory pre-deposit " required for filing an appeal under Sec.26 (6A) of the Maharashtra Value Added Tax Act, 2002 and passed order stating that the protest payments are entitled to be adjusted towards the statutory pre-deposit. In the present case, there appears to be no such protest in any form. Further, during admission proceedings before this Bench, the Ld. Counsel was enquired about the filing / submitting any such protest with adjudicating authority or with the department, and he categorically stated that no such action was taken per-se, except filing their submissions and prayers in the form of replies to SCN, submission of Statement of Facts and grounds of appeal.

As regards the judicial pronouncement relied upon by the appellant, the same are distinguishable on facts and law and can't be applied mechanically to the present case. The appellant has failed to establish that the facts of the present case are identical to those considered in the cited decisions.

12. Another contention submitted by appellant is that the First Appellate Authority considered the said amount as pre-deposit and admitted the appeal and decided the case on merits. In this regard, it was noticed that the impugned order is silent and no discussions/reasons were adduced on waiver of pre-deposit. Hence, we are not in know-how about reasons for the admission of appeal without pre-deposit. Under sections 107(6) and 112(8) of the Act, pre-deposit is condition precedent to filing appeal. The language used is "No appeal shall be filed under sub-section (i), unless ….." which is mandatory and directory. At the first

appellate stage under Sec. 107(6), the tax-payer is required to pay 10% of disputed tax. At the GSTAT stage, Sec. 112(8) requires another 10% of remaining disputed tax, in addition to the amount already paid under Sec. 107(6). Therefore, in a regular tax demand matter, the cumulative pre-deposit generally becomes 20% of disputed tax in addition to admitted tax liabilities. Hon'ble Orissa High Court in W.P. (c) No. 3981 of 2025 in the matter of M/s. Triveni Engineers vs Assessing Authority, CT&GST, in order dated 24.4.2025, observed that " 4. once the statute has put a condition for entertainability of an appeal as condition precedent, such appeal in absence of the compliance thereof is not liable to be entertained by Appellate Authority ….. Unless that deposit mandated under the said provision is made, the appeal would remain as dead letter and shall not be entertained by the Authority". SLP No. 20880/2025 filed against this HC order was dismissed by Hon'ble Supreme Court on 4.8.2025 in 2025 (8) TMI 487-SC.

13. We have examined the request of Appellant i.e to consider the amount paid during investigations as pre-deposit, in the light of averments made by the counsels of Appellant and Respondents and keeping in view of relevant provisions of Act quoted herein above as well as in the given facts and circumstances, as discussed at above paras. In our considered opinion, the appellants could not bring on record any material to prove the amount paid during investigations is a contested issue or paid under protest. Consequently, the amount paid through GSTR-3B and not disputed in any previous quasi-judicial fora as discussed in above paras, is to be treated as "admitted liability". Further, as per provisions of Sec. 107(6), Sec.112 (8) of the Act, the applicant has to pay full amount of admitted tax, interest, fine, fee and penalty and ten per cent of remaining amount of tax in dispute as pre-deposit while preferring appeal before the Tribunal. This amount is in addition to the pre-deposit already made under Sec.107 of the Act while preferring appeal before the First Appellate Authority. It appears that no mandatory pre-deposit was made at first appellate stage. The averments that first appellate authority has accepted their contention on waiver of pre-deposit, by the counsel of appellant is devoid of any such directions/order in the impugned order by the first appellate authority. Further, in view of Hon'ble Orissa High Court's observations in para 12 (Supra) that unless that deposit mandated under the provisions is made, the appeal would remain a dead letter and also taking into consideration the facts narrated in para 8 (supra), it appears that the first appellate authority erred in entertaining the appeal without pre-deposit.

Accordingly, we are inclined to hold that pre-deposits under Sec.107(6) & 112 (8) are required to made before admitting the appeal. We order accordingly.

14. With this direction aforesaid to the Appellant, the request of the Appellant is decided and disposed of.
15. At this juncture, the Counsel for Appellant prayed for 10 days' time for payment of the pre-deposits, the same is allowed by the Bench. Upon proof of payment of pre-deposits as directed above, the Registry shall scrutinise the same and place the matter before the Bench for orders regarding admission of the Appeal.
16. Interim order on the request of appellant on pre-deposit matter, pronounced in open court in the presence of authorised representatives of the Parties.
17. The Registry is directed to upload the interim order on GSTAT portal immediately.

List the matter after two weeks.

(Sushil Kumar Sharma)

(Duvvuri Krishna Srinivas)

Dated: 08.09.2026