GSTAT

Division Bench Court No. Court I

INTL.APPL/2/CTT/2026
IN
APL/10/2026

MANORANJAN DASH ....**Appellant**

Versus

COMMISSIONERATE OF CT GST, PREMANANDA.NAIK01 ....**Respondent**

Counsel for Appellant
ABHISHEK OJHA, ADVOCATE

Counsel for Respondent
ANANDA DAS, ADVOCATE

Hon'ble Suchismita Misra, Member(Judicial)
Hon'ble Ranjan Kumar Sahoo, Member (Technical)

ORDER

Case No.: INTL.APPL/2/CTT/2026 arising out of Appeal No. APL No. 10/CTT/2026

1.This I.A arising out of Appeal No.APL.No.10/CTT/2026,has been filed by the Respondent-Petitioner with the following prayers.

1) To recall/modify the finding contained in paragraph 12 of the Order dated 08.07.2026 to the extent it holds that the judgement of the Hon'ble Jharkhand High Court in M/s Ashirwad Food Industries "squarely applies" to the present case and that no further pre-deposit is required under Section 112 of the CGST Act;

2)To reconsider the applicability and interpretation of Section 112(8)(b) of the CGST/OGST Act, particularly the expression "in addition to the amount paid under Sub-Section (6) of Section 107",after affording the Respondent an opportunity of hearing;

3)To reconsider the applicability and interpretation of Section 112(8)(b) of the CGST Act, particularly the expression " in addition to the amount paid under Sub-Section (6) of Section 107”, after affording the Respondent an opportunity of hearing;

4)To clarify that the observations contained in the Order dated 08.07.2026 shall not be treated as laying down a general proposition regarding adjustment of the pre- deposit made under Section 107(6) against the statutory pre- deposit contemplated under Section 112(8)(b), without examining the statutory provision and the issue in an appropriate case.

5) To pass such other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

2. The grievance of the Respondent-petitioner, in brief, is that the Order of this Tribunal dated 08.07.2026 was passed without affording it an opportunity of being heard, although the said order determined an issue having a bearing upon its rights. In the instant case, the Tribunal admitted the appeal while holding that the Opposite-party (Appellant in the present appeal) was not required to make any further pre- deposit, as mandatorily required under Section 112(8(b) of the CGST Act for admission of an appeal before the Tribunal. The Respondent-petitioner contends that it could have contested the said issue had it been afforded opportunity of being heard at the time of hearing on admission of the appeal.

The Respondent-petitioner has also referred to another case pending before this Tribunal and awaiting admission, wherein an opportunity was given to the Respondent to participate in the hearing on the question of admission. While making the aforesaid submissions, the Respondent- petitioner has specifically mentioned that the present application is confined strictly to the issues relating to the interpretation and applicability of Section 112(8)(b) of the CGST/OGST Act and the observations made by the Tribunal in its order dated 08.07.2026.At the same time the Respondent-Applicant has also stated that it does not seek to reopen, disturb or challenge any other finding recorded or relief granted by the Tribunal in favour of the Opposite party(Appellant in the present case).

3. Before considering the issues raised by the Respondent-Petitioner in this IA, and without entering in to the merits of the appeal, the Tribunal considers it appropriate to briefly mention the facts and circumstances which led to the filing of the present Interim Application by the Respondent-Petitioner. Admittedly, as revealed from the previous orders passed in the instant appeal, the Respondent was not notified to appear when the appeal was listed before the Bench with defects for admission. While considering the defects pointed out by the Registry, the Tribunal found that the same related to

i)Short-payment of the requisite Court fees.

ii)Non-payment of the pre-deposit contemplated under Section 112(8)(b) of the CGST Act

4. In course of hearing on 08.07.2026, the Appellant(assessee) submitted that he would comply with the first defect pointed out by the Registry. As regards the non-payment of the pre-deposit under Section 112(8)(b), it was submitted on behalf of the Appellant that the amount paid towards pre-deposit by the Assessee before the Appellate authority was already in excess of the amount required to be deposited for preferring the present appeal before the Tribunal. Therefore, he should not be required to make any further pre-deposit in this appeal. In support of his such contention, the Appellant also cited the decision of Hon'ble High Court of Jharkhand in M/s Ashirwad Food Industries vs.Union of India. Having regard to the facts and circumstances of the present appeal

before this Tribunal, the mandate of the relevant statutory provision, and the aforesaid decision of Hon'ble High Court of Jharkhand, relied upon by the Appellant, this Tribunal concluded that in the facts and circumstances of the present case, the Appellant was not required to deposit any further amount towards pre-deposit. The appeal was accordingly admitted, on being reported that the amount already deposited by the Appellant towards pre-deposit was in excess of the amount required to be deposited for preferring the appeal before the Tribunal and that the requisite Court fee had also been paid in full. Then direction was given for issuance of notice to the Respondent for filing of cross-objection.

5. The Respondent-petitioner's grievance, as revealed from its application, is that it seeks the Tribunal's intervention at this point with regard to its finding to the extent of Tribunal's interpretation of Section 112(8)(b) of the CGST/OGST Act (hereinafter for short ‘the Act’). It is submitted by the Respondent-Petitioner that, as the decision on such a contentious issue was rendered by this Tribunal ex parte,the Order in question requires modification on the abovestated issue raised by it after affording it an opportunity of being heard in the matter afresh.

6. Taking note of the contents of the petition filed by the Respondent-Petitioner in the IA as well as its written note of submissions, particularly paragraph 'G' thereof, it is at the outset, made clear that this Tribunal is conscious of the limitations of its jurisdiction and does not require any reminder from the parties in that regard.Even while examining the issue in question at the stage of consideration of the appeal for admission, this Tribunal had critically examined both the literal as well as the substantive implications of the statutory mandate requiring payment of a prescribed portion of the disputed tax demand as a condition precedent for filling of appeals before the Appellate Authority

under Section 107(6) and before the Tribunal under Section 112(8) of the Act. The executability and workability of the above provisions were considered in the context of different situations arising from factual variations in individual cases, particularly with regard to the requirement of making payment of the amount contemplated under Section 112(8)(b) of the Act.

7. For proper appreciation of the issues raised by the learned Counsel for the Respondent-Petitioner, the relevant statutory provisions are quoted below:

Section 107(6) of the Act:

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.

[**Provided** that in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equal to ten per cent. of the said penalty has been paid by the appellant.]

Section 112(8) of the Act:

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.

[Provided that in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equal to ten per cent. of the said penalty, in addition to the amount payable under the proviso to sub-section (6) of section 107 has been paid by the appellant.]

8. Learned Counsel for the Respondent-Petitioner contended that,in view of the clear statutory mandate contained in Section 112(8) of the Act, the pre-deposit already made under Section 107(6) of the Act should not have been adjusted against the amount required to be deposited for preferring an appeal before the Tribunal. In support of his aforesaid submission,he placed reliance upon the order dated 27.11.2025 passes by the Hon'ble High Court of Orissa in W.P.(C) No.32643 of 2025,Abhijit Nayak v.The Commissioner of CT &GST,Odisha. The facts and circumstances of the present case before the Tribunal are, however, distinguishable from those which formed the basis of the aforesaid order passed by the Hon'ble High Court of Orissa.

Learned Counsel also cited the judgment of the Hon'ble Supreme Court in CIT v.Calcutta Knitwears,(2014)362 ITR 673(SC),in support of his contention to apprise that a taxing statute is required to be strictly construed and that,even if a literal interpretation results in hardship or inconvenience, such interpretation has to be given effect to. On a careful reading of the aforesaid judgment of the Hon'ble Supreme Court, it is noticed that the factual situation and circumstances involved therein are distinct from the present case.

9. The issue before this Tribunal is whether the statutory pre-deposit contemplated under Section 107(6) and112(8) of the CGST Act represents a specified portion of the tax in dispute and If so,whether the assessee-appellant is required to make a further deposit under Section 112 (8) of the Act in a situation where he has already discharged his statutory obligation by making the prescribed pre-deposit while preferring an appeal before the Appellate Authority, but the quantum of disputed tax was substantially reduced by the Appellate Authority subsequently. In this situation the demand which remains after the order of the Appellate Authority becomes the tax in dispute for the purpose of further appeal before the Tribunal. Therefore, if the amount already deposited by the assessee-appellant at the first appellate stage is equal to or exceeds the prescribed percentage of the tax which still remains in dispute after such reduction ,then can the assessee be, required justifiably, to make a further deposit of ten percent of the surviving tax in dispute to prefer appeal before the Tribunal.

10. The above stated situation would not have arisen had the appellant pursued the appeal without paying the tax demand and the said demand remained intact by order of the Appellate Authority. In that case, the provisions contained in Section 107(6) and 112(8) of the Act would have operated in a straightforward manner. For better appreciation, another situation can also be visualized for a reasonable understanding and conclusion. Suppose an assessee pays the entire disputed tax demand under protest and then pursues the appellate remedy, can he be asked to avail the remedy only after making prescribed pre-deposit as envisaged under Sections 107(6)and112(8)of the Act, insisting upon the

literal interpretation of the provisions which will give only an anomalous or unworkable result. That apart the pre-deposit already made by the assessee-appellant is not a payment towards any separate or independent liability. It represents a specified portion of the disputed tax itself which the assessee is required to pay at the time of filing an appeal under Section 107(6) of the Act.

11. Therefore,the statutory requirement ,though prescribed in general terms ,can not be applied mechanically in every situation ignoring the facts that the assesee might have already deposited an amount which in terms of reduced tax liability is either equivalent to or even exceeds the aggregate percentage of the tax remaining in dispute before the Tribunal.

In the instant case the admitted position is that the assesee-appellant has already made pre-deposit of Rs 1,13,448 as mandated under Section 107(6) of the CGST/OGST Act against the original disputed tax liability of Rs 11,34,474.His disputed tax liability was reduced to Rs 1,02,012 by order of the Appellate Authority and at present the assessee-appellant has come up with this appeal before the Tribunal under Section 112(8)(b) of the Act challenging the reduced tax in dispute. It is significant to mention here that in the present IA, the Respondent-applicant has categorically stated that although it has challenged the non-payment of the mandatory ten percent of the disputed tax demand, in addition to the amount already paid by the assessee at the time of preferring the appeal before Appellate authority, yet it (the Respondent) does not seek to reopen, modify or disturb any other finding recorded by the Appellate Authority or any other relief granted in favour of the assessee-appellant who is the Opposite-party in the IA.

12. It would be pertinent to mention here that the facts and circumstances of the present case, particularly with regard to the issue of pre-deposit, are found to be identical to those considered by the Hon'ble High Court of Jharkhand in the case of M/s Ashirwad Food Industries v. Union of India.

For a better appreciation of the issue involved, the relevant portion of the judgment of the Hon'ble Court is quoted here,

Quote:

"6. Ms. Amrita Sinha, learned counsel for the petitioner, submits that at the first appellate stage, the petitioner had made a pre-deposit of Rs.23,85,182/- because the demand in the order in original was approximately Rs.2.38 crores. She submits that the first appellate authority has considerably scaled down the demand which is now approximately Rs.40,00,000/-. Accordingly, she submits that the pre-deposit of 20% Page 9 of 78 would come to around Rs.8,00,000/-. She further points out that since the petitioner has already made a pre-deposit of approximately Rs.23.85 lakhs, the Tribunal should not now insist upon any further pre-deposit.

7. ***We have perused the documents on record and based upon the same, we find substance in the contention advanced by Ms. Amrita Sinha. Considering the deposit of Rs.23.85 lakhs already made at the first appellate stage, we agree that there would be no question of making any further pre-deposit for instituting an appeal against the impugned order dated 30.06.2025."*** Unquote

13. Keeping in view all the aforesaid aspects, as discussed above, as well as the ratio and observations of the Hon'ble High Court in a matter involving the same central legislation which are directly relevant to the issue involved in the present case and certainly carry persuasive value for this Tribunal, we find no ground warranting interference with the Order dated 08.07.2026, holding that no further pre-deposit is required to be paid by the assessee-appellant for pursuing the present appeal under Section 112(8) of the Act before the Tribunal.

14. Accordingly the IA is disposed of but in the circumstances no order as to cost.

(Ranjan Kumar Sahoo) (Suchismita Misra)

Dated: 21.09.2026