2025:AHC:188875

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 2042 of 2025

M/S Wintage Engineers & Consultants Private Limited

.....Petitioner(s)

Versus

Union Of India And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Nishant Mishra, Vedika Nath
Counsel for Respondent(s)	:	A.S.G.I., Ramesh Chandra Shukla, Saumitra Singh

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard learned counsel for the petitioner and learned ACSC.

2. Present writ petition has been filed against the order dated 31.1.2025 passed by respondent no.2 and the order dated 16.8.2024 passed by the respondent no.3.

3. Learned counsel for the petitioner submits that the petitioner is engaged in the business of manufacturing articles of iron and steel, parts and accessories of the motor vehicles, air conditioning machines etc. as well as export/supply under advance authorisation issued under Chapter 4 of the Foreign Trade Policy. He further submits that the petitioner obtained GSTN. He further submits that the business premises of the petitioner was surveyed. He further submits that while the investigation was going on, the petitioner vide DRC-03 dated 3.6.2024 deposited an amount of Rs. 31,95,976/- under protest, being the amount of IGST refund on export made against advance licence. He further submits that the amount deposited by the petitioner has not been appropriated in any of the proceedings. He further submits that the order under section 74 of the CGST Act was passed against which an appeal was filed but by the impugned order the same has been dismissed for non compliance of the mandatory pre deposit of 10%. He further submits that the amount of pre deposit has already been deposited under protest but the same has not been appropriated. The said amount should have been treated as fulfilment of mandatory pre deposit of 10% as required under section

107(6) of the Act. He further submits that instead of dismissing the objection, the authorities ought to have given a notice/ an opportunity to place his case. In support of his submission he has placed reliance on the judgment of this Court in Writ Tax No. 987 of 2023 **(M/s R.M. Dairy Products LLP vs. State of U.P. and others)** decided on 25.9.2025 (2025:AHC:172970).

4. Per contra, learned ACSC support the impugned order and submits that there was no strict compliance for depositing pre deposit as required under section 107(6) of the Act, therefore, the impugned orders are justified as the petitioner has failed to deposit the amount as required under the Act.

5. It is not in dispute that the orders have been passed against the petitioner creating certain liability against which the petitioner preferred the appeal but the same have been dismissed as not maintainable in the absence of mandatory deposit of 10 % of the remaining amount of impugned tax liability as contemplated under the provisions of Section 107 (6) (ii) of the Act. Section 107 (6) (ii) of the Act mandates for deposit of 10 % of the remaining amount of tax in dispute.

6. Record shows that the petitioner has deposited a sum of Rs. 31,95,976/- under protest, the details of which has been mentioned in the writ petition. Record further shows that the liability created against the petitioner in pursuance of the impugned order in which 10% of the amount can easily be adjusted from the amount already deposited as mentioned above. Once the amount deposited by the petitioner under protest has not been quantified from any of the demand in the impugned order or otherwise has been brought on record in the counter affidavit. The petitioner can take the advantage of the said amount towards the pre-deposit for entertaining the appeal. The Apex Court in the case of **VVF (India) Ltd. Vs. State of Maharashtra** (2023) 4 Centax 421 (SC) while considering the analogous provisions of Maharashtra VAT Act has held as under:

"3. The issue, which arises in the appeal, is whether amounts which have been deposited under protest prior to an order of assessment can be adjusted against the mandatory pre-deposit required for filing an appeal under Section 26(6A) of the Maharashtra Value Added Tax Act 2022.

….

8. The correctness of the view of the High Court turns upon the interpretation of Section 26(6A) of the MVAT Act, which reads as follows:

6A) No appeal against an order, passed on or after the commencement of the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017 (Mah XXXI of 2017), shall be filed before the appellate authority in first appeal, unless it is accompanied by the proof of payment of an aggregate of the following amounts, as applicable,-

(a) in case of an appeal against an order, in which claim against declaration or certificate, has been disallowed on the ground of non-production of such declaration or, as the case may be, certificate then, amount of tax, as provided in the proviso to sub-section (6),

(b) in case of an appeal against an order, which involves disallowance of claims as stated in clause (a) above and also tax liability on other grounds, then, an amount equal to 10 per cent of the amount of tax, disputed by the appellant so far as such tax liability pertains to tax, on grounds, other than those mentioned in clause (a),

(c) in case of an appeal against an order, other than an order, described in clauses (a) and (b) above, an amount equal to 10 per cent. of the amount of tax disputed by the appellant,

(d) in case of an appeal against a separate order imposing only penalty, deposit of an amount, as directed by the appellate authority, which shall not in any case, exceed 10 per cent of the amount of penalty, disputed by appellant."

11. While analyzing the rival submissions, it is necessary to note, at the outset, that, under the provisions of Section 26(6A), the aggregate of the amounts stipulated in the sub-clauses of the provision has to be deposited and proof of payment is required to be produced together with the filing of the appeal. Both clauses (b) and (c) employ the expression "an amount equal to ten per cent of the amount of tax disputed by the appellant". The entirety of the undisputed amount has to be deposited and 10 per cent of the disputed amount of tax is required to be deposited by the appellant. In the present case, the appellant disputes the entirety of the tax demand. Consequently, on the plain language of the statute, 10 per cent of the entire disputed tax liability would have to be deposited in pursuance of Section 26(6A). The amount which has been deposited by the appellant anterior to the order of assessment cannot be excluded from consideration, in the absence of statutory language to that effect. A taxing statute must be construed strictly and literally. There is no room for intendment. If the

legislature intended that the protest payment should not be set off as the deposit amount, then a provision would have to be made to the effect that 10 per cent of the amount of tax in arrears is required to be deposited which is not the case. Justice Bhagwati in A.V Fernandez v. State of Kerala4 , writing for a Constitution Bench, elucidated the principle of strict interpretation in construing a taxing statue as follows:

"29. In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law. If the revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case of not covered within the four corners of the provisions of the taxing statue, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter."

12. The High Court, while rejecting the petition, placed reliance on the fact that there has to be a proof of payment of the aggregate of the amounts, as set out in clauses (a) to (d) of Section 26(6A). The second reason which weighed with the High Court, is that any payment, which has been made albeit under protest, will be adjusted against the total liability and demand to follow. Neither of these considerations can affect the interpretation of the plain language of the words which have been used by the legislature in Section 26(6A). The provisions of a taxing statute have to be construed as they stand, adopting the plain and grammatical meaning of the words used. Consequently, the appellant was liable to pay, in terms of Section 26(6A), 10 per cent of the tax disputed together with the filing of the appeal. There is no reason why the amount which was paid under protest, should not be taken into consideration. It is common ground that if that amount is taken into account, the provisions of the statute were duly complied with. Hence, the rejection of the appeal was not in order and the appeal would have to be restored to the file of the appellate authority, subject to due verification that 10 per cent of the amount of tax disputed, as interpreted by the terms of this judgment, has been duly deposited by the appellant."

7. In the aforesaid judgement, Hon'ble the Apex Court has held that amount under protest can be adjusted towards the payment of mandatory deposit for entertainment of appeal.

8. This Court in **M/s R.M. Dairy Products** (supra) in a bunch of cases, leaving case being Writ Tax No. 987 of 2023 decided on 25.9.2025 has taken the view that the amount deposited under protest can be utilised

towards pre deposit of 10% of the amount for entertaining the appeal as required under section 107(6) of the GST Act.

9. In the present case, it also clearly states that amount of Rs. 1.40 crores was deposited by the petitioner under protest and no material has been brought on record by the respondent that the said amount has been adjusted in respect of any other demand raised against the petitioner in any of the proceedings. Once the amount deposited under protest has not been adjusted till date, the petitioner is entitled to avail the said deposit under protest towards the adjustment / pre-deposit of 10 % of the amount for entertainment of his appeal as required under Section 107 (6) of GST Act.

10. In view of the aforesaid judgment of the Apex Court as well as this Court the issue in hand is squarely covered, therefore, the impugned orders cannot be sustained in the eyes of law and same are hereby set aside.

11. The matter is remanded to the first appellate authority, who shall accept the amount deposited by the petitioner under protest, as pre-deposit and proceed to decide the appeal on merit by passing reasoned and speaking order, in accordance with law.

12. It is further provided that if any short fall in terms of pre-deposit for entertaining the appeal, after adjusting the amount already deposited by the petitioner, is found, the same shall be intimated to the petitioner and the petitioner shall deposit the same within 15 days from the date of receipt of the such intimation.

13. The writ petitions is accordingly allowed.

(Piyush Agrawal,J.)

October 28, 2025
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