Tejas Arecanut Traders vs. Joint Commissioner of Commercial Taxes & Another

Whether the mandatory pre-deposit of 10% under Section 107(6)(b) of the CGST Act is to be computed on the entire demand (tax + interest + fine + fee + penalty) or exclusively on the disputed tax amount.

Date of Order: December 20, 2023
Case Law No: GIB-KHC-2023-10
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

BACKGROUND

The petitioner, a trader, was subjected to a confiscation order by the Enforcement Officer who determined the total demand at Rs.1,41,11,633/-, which included tax, fine, penalty and other components, with the tax component alone determined at Rs.6,71,983/-. When the petitioner filed an appeal before the Appellate Authority under Section 107(1) of the CGST Act, the Appellate Authority declined to admit the appeal on the ground that the petitioner had failed to comply with the pre-deposit requirement under Section 107(6) of the CGST Act — having calculated 10% pre-deposit on the entire demand of Rs.1,41,11,633/- (i.e., Rs.14,11,163/-). The petitioner, however, had already deposited 10% of the tax component alone amounting to Rs.67,200/-.

FACTS

The petitioner challenged the entire demand confirmed in the confiscation order. The Appellate Authority, while examining the maintainability of the appeal, called upon the petitioner to deposit 10% of the total composite demand of Rs.1,41,11,633/- (inclusive of fine, penalty, fee and interest). The petitioner contended that the expression "tax in dispute" in Section 107(6)(b) of the CGST Act refers only to the **tax** component and does not include interest, penalty, fine and fee, and that he had already deposited 10% of the tax as determined by the Enforcement Officer. The Appellate Authority, rejecting this contention, refused to admit the appeal, leading to the present writ petition before the High Court.

COURT OBSERVATIONS (Verbatim)

"*In the context of disputing the entire tax amount, the 10% pre-deposit requirement pertains exclusively to the remaining disputed tax amount as articulated in the statutory language. Consequently, there exists a statutory basis for asserting that 10% pre-deposit obligation is confined to the contested tax quantum excluding penalty, fee and interest. This interpretation aligns with the legal principle that penalties are consequential to the determination of the underlining tax liability.*"

"*The intentional exclusion of disputed interest, fine, fee, and penalty from sub-clause (b) of Section 107(6) of the CGST Act signifies a crucial legislative distinction. Analyzing this deliberate separation provides insights into the lawmaker's clear intent regarding the nature and scope of the pre-deposit obligation in appeals.*"

"*By isolating 'a sum equal to ten per cent of the remaining amount of tax in dispute' in sub-clause (b), the legislator conveys a focused pre-deposit requirement specifically related to the disputed tax amount. This implies that the legislative design prioritizes the financial commitment associated directly with the primary tax liability being contested.*"

"*The appellate authority therefore, was not justified in calling upon the petitioner to deposit 10% of not only tax liability, but, also fine which is imposed by the Enforcement Officer equivalent to the value of the goods. If the order passed by the appellate authority under challenge is accepted, then the condition under clause (b) giving an option to the aggrieved person who disputes the entire tax liability to deposit 10% of the remaining amount of tax in dispute would be defeated.*"

"*Therefore, the order under challenge is not sustainable. There is no need for the petitioner to deposit any percentage of disputed interest, fine, fee and penalty arising from the impugned order. In essence, the legislative intent as construed from Section 107(6)(b) of the CGST Act is that aggrieved party has to pre-deposit 10% of the tax liability and it does not extend to penalties, fees or interest when the petitioner has contested the entirety of the tax liability.*"

FINAL VERDICT

The Writ Petition was **allowed**. The impugned order of the Appellate Authority calling for 10% pre-deposit on the total demand of Rs.1,41,11,633/- was **set aside**. Since the petitioner had already deposited 10% of the tax liability (Rs.67,200/-), the Appellate Authority was directed to **admit the appeal and decide it on merits** in accordance with law.

IN FAVOUR OF ASSESSEE

CASES REFERRED BY THE COURT

#	Case Name	Citation
1	Carbon Resources (P) Ltd. vs. State of Bihar & Others	Civil Writ Jurisdiction Case No. 24120 of 2023 (Patna High Court)
2	Durga Raj Vijay Kumar vs. State of U.P.	(2022) 66 GSTL 321 (Allahabad High Court)
3	Commissioner of Income Tax vs. Hindustan Bulk Carriers	2003 (3) SCC 57 (Supreme Court)
4	J.K. Synthetics Ltd. vs. CTO	(2004) 4 SCC 276 (Supreme Court)
5	Prakash Nath Khanna vs. CIT	(2004) 9 SCC 686 (Supreme Court)
6	B. Premanand vs. Mohan Koikal	[2011] 4 SCC 266 (Supreme Court)