



2025:AHC:172970

Reserved on 23.9.2025

Delivered on 25.9.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. 987 of 2023

M/s R M Dairy
Products LLP

.....Petitioners(s)

Versus

State of UP and others

.....Respondents(s)

Counsel for Petitioners(s)	: Nishant Mishra, Shivangi Singh
Counsel for Respondent(s)	: CSC

With

WRIT TAX No. 990 of 2023

M/s R M Dairy
Products LLP

.....Petitioners(s)

Versus

State of UP and others

.....Respondents(s)

Counsel for Petitioners(s)	: Nishant Mishra, Shivangi Singh
Counsel for Respondent(s)	: CSC

With

WRIT TAX No. 988 of 2023

M/s R M Dairy
Products LLP

.....Petitioners(s)

Versus

State of UP and others

.....Respondents(s)

Counsel for Petitioners(s)	: Nishant Mishra, Shivangi Singh
Counsel for Respondent(s)	: CSC

With**WRIT TAX No. 991 of 2023**M/s R M Dairy
Products LLP

.....Petitioners(s)

Versus

State of UP and others

.....Respondents(s)

Counsel for Petitioners(s)	: Nishant Mishra, Shivangi Singh
Counsel for Respondent(s)	: CSC

With**WRIT TAX No. 992 of 2023**M/s R M Dairy
Products LLP

.....Petitioners(s)

Versus

State of UP and others

.....Respondents(s)

Counsel for Petitioners(s)	: Nishant Mishra, Shivangi Singh
Counsel for Respondent(s)	: CSC

Court No. - 7**HON'BLE PIYUSH AGRAWAL, J.**

1. Heard learned counsel for the petitioner and learned ACSC for the State respondents.
2. Similar controversy involved in all the aforesaid five writ petitions, therefore, with the consent of the parties, all the five writ petitions are being decided by a common judgement treating Writ Tax No. 987 of 2023 as leading case.

Writ Tax No. 987 of 2023

3. By means of present petition, the petitioner is assailing the order dated 17.5.2023 passed by respondent no. 2.

4. Learned counsel for the petitioner submits that the petitioner is a limited liability partnership firm incorporated under the Limited Liability Partnership Act, 2008 and engaged in manufacturing and trading of dairy products having GSTIN 09115FR3755M1ZA. He submits that business premises of the petitioner was surveyed on 17.2.2021 by the officers of DGGSTI during which certain records relating to purchases made by the petitioner from Darsh Dairy were resumed and due to pressure and coercion of the officers conducting the search, the petitioner has deposited a sum of Rs. 1.40 crores under protest in the absence of any adjudicated tax liability and therefore, the said deposit was nothing but a pre-deposit made by the petitioner. He submits that the proceedings under Section 74 of the Act was initiated in which the order dated 3.12.2022 was passed against which the petitioner has preferred an appeal, which has been dismissed as not maintainable on the ground that the petitioner has failed to bring on record any evidence of deposit of mandatory requirement of 10 % as required under Section 107 (6) of the Act.

5. He submits that the petitioner has deposited a sum of Rs. 1.40 crores under the protest on various dates during search conducted by officers of DGGSTI and said fact could not be disputed at any stage. He submits that once the amount is still lying with the revenue, the petitioner was not required to deposit any further amount as contemplated under Section 107 (6) of the Act. He submits that even assuming without admitting that the petitioner is required to deposit 10 % of the required amount, the same can very well be adjusted from the amount already deposited by the petitioner.

6. He further submits that in view of Clause 6 of the Circular No. 172/04/2022-GST dated 6.7.2022, issued by the GST department, it is

clarified that any payment towards output tax, whether self assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.

7. In support of his submission, learned counsel for the petitioner has relied upon the judgement of this Court in the case of **M/s O.C. Infraventures and construction Pvt. Ltd. Vs. Joint Commissioner (Appeals) Customs CGST and Central Excise Lko. And another (Neutral Citation No. 2025 :AHC: LKO:52229** as well as judgement of **Gujarat High Court in the case of Yasho Industries Ltd. Vs. Union of India (2024) 24 Centax 338 (GUJ.)**, which has been affirmed by the Apex Court in Special Leave Petition (Civil) Diary No. 17547/2025 vide order dated 19.5.2025. He further relied upon the judgement of Apex Court in the case of **VVF (India) Ltd. Vs. State of Maharastra, (2023) 4 Centax 421 (SC)**.

8. Per contra, learned ACSC supports the impugned order and submits that the petitioner was duty bound to deposit the 10 % amount as contemplated under Section 107 (6) (ii) of the Act but the petitioner has failed to do so. He submits that the petitioner has not filed any documentary evidence showing 10 % amount was being deposited therefore, the impugned order is justified. He further submits that mere depositing the amount under protest, the petitioner cannot take benefit of the same.

9. After hearing learned counsel for the parties, the Court has perused the records.

10. It is not in dispute that the orders have been passed against the petitioner creating certain liability during the month of February, 2020 to November, 2020 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. The record shows that petitioner has deposited Rs. 1.40 crores under protest. The details as mentioned in para no. 29 of the writ petition is quoted hereunder :-

<i>Sl.</i>	<i>Tax Period</i>	<i>Disputed Tax</i>	<i>Pre-deposit amount</i>
1.	February 2020	9,00,000/-	90,0000/-
2.	March 2020	42,10,000/-	4,21,000/-
3.	April 2020	12,00,000/-	1,20,000/-
4.	May 2020	56,70,000/-	5,67,000/-
5.	June 2020 to Nov.2020	5,86,86,700/-	58,68,670/-
	Total :	7,06,66,700/-	70,66,670/-

11. In view of the aforesaid chart, it appears that total disputed tax liability for the tax period of Feb 2020 to Nov. 2020 is of Rs. 7,06,66,700/- and the pre-deposit amount for entertaining the appeals is of Rs. 70,66,670/-. The petitioner has already deposited Rs. 1.40 crores under protest and the said amount has not been adjusted from the amount of pre-deposit as required under the Act. Once the amount being deposited by the petitioner under the protest have not been quantified from any of the demand as mentioned above, the petitioner can take advantage of the said amount towards the pre-deposit for entertaining the aforesaid appeals.

12. Hon’ble the Apex Court in the case of VVF (India) Ltd. (supra) while considering the analogous provisions of Maharastra 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 20022.

....

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 statute 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 is not covered within the four corners of the provisions of the taxing statute, 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.”

13. 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.

14. The circular dated 6.7.2022 (referred above) issued by the GST Department clearly provides for utilization of the amount for electronic credit ledger by the registered person for payment of any tax under the

GST law. The said circular was interpreted by the Gujarat High Court in the case of **Yasho Industries Ltd. (supra)**, as under:

“6. Considering the facts of the present case, the amount paid by the petitioner as pre- deposit in compliance of section 107(6)(b) of the CGST Act utilizing the amount of Electronic Credit Ledger is required to be considered valid and Page 18 of 19 Uploaded by JYOTI V. JANI(HC00213) on Fri Oct 25 2024 Downloaded on : Sat Oct 26 22:51:58 IST 2024 NEUTRAL CITATION C/SCA/10504/2023 JUDGMENT DATED: 17/10/2024 undefined impugned letter dated 25.04.2023 issued by the respondent No.2 directing the petitioner to pay pre-deposit amount through Electronic Cash Ledger is therefore, hereby quashed and set aside. Therefore, the appeal filed by the petitioner is required to be heard on merits by considering the payment of pre- deposit by the petitioner from Electronic Credit Ledger as a sufficient compliance of the provisions of section 107(6)(b) of the CGST Act. The petition is accordingly disposed of. “

15. The judgement of Gujarat High Court in the case of Yasho Industries Ltd. (supra) was assailed by the revenue before the Apex Court in the Special Leave Petition, in which the Apex Court has affirmed the judgment passed by the Gujarat High Court vide judgement dated 19.5.2025.

16. Further, after following the said judgement of Gujarat High Court in the case of **Yasho Industries Ltd. (supra)** as affirmed by the Apex Court, the Lucknow Bench of this Court in the case of **M/s O.C. Infraventures and Construction Pvt. Ltd (supra)** has permitted the petitioner therein to utilize the amount in the electronic ledger to be paid under Section 107 (6) of the GST Act and directed the authorities to treat the appeal for compliance of the provisions of the Act for entertainment of the appeal.

17. The controversy involved in all the aforesaid writ petitions, is squarely covered with the decisions as referred herein above.

18. 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.

19. In view of the facts and circumstances of the case as well as case laws as referred herein above, the impugned orders passed in all the aforesaid writ petitions, cannot be sustained in the eyes of law and same are hereby quashed.

20. 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 appeals on merit by reasoned and speaking order, in accordance with law.

21. It is further provided that if any short fall in terms of pre-deposit for entertaining the appeals, 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.

22. All the five writ petitions are **allowed**, accordingly.

(Piyush Agrawal, J.)

September 25, 2025

Rahul Dwivedi/-