IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2345 OF 2025

Navnit Motors Pvt. Ltd. ...Petitioner

Versus

Commissioner of CGST & Central
Excise, (Appeals-III), Mumbai & Anr. ...Respondents

Mr. Ishaan V. Patkar a/w Mr. Durgesh G. Desai & Mr. Yeshwant J. Patil i/by Alaksha Legal for the Petitioner.
Mr. Satyaprakash Sharma a/w Ms. Niyati Mankad (through VC) & Ms. Priyanka Singh for the Respondents.

CORAM: M. S. Sonak &
Jitendra Jain, JJ.
DATED: 14 July 2025

ORAL JUDGMENT:-*(Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.

2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. The Petitioner disputes the order dated 18 March 2025, whereby the Appellate Authority dismissed the Petitioner's appeal on the basis that using Input Tax Credit (ITC) to pay the 10% pre-deposit was not permitted and does not satisfy the requirements of Section 107(6) of the Central Goods and Services Tax Act, 2017 (CGST Act).

4. The impugned order could have been appealed to the GST Tribunal. However, admittedly, the GST Tribunal is not functioning and, therefore, we are required to entertain this petition. Besides, before the impugned order was made, neither was any notice given nor was the Petitioner heard on the issue of alleged non-compliance with the requirement of pre-deposit, breaching the principle of natural justice.

In case of such a breach, the practice of exhaustion of alternate remedies is ordinarily not insisted upon.

5. Mr. Patkar submitted that the impugned order violates natural justice and, in any event, the view taken by the Appellate Authority directly conflicts with the decision of the Division Bench of this Court in ***Oasis Realty vs. Union of India & Ors.***[1]. He pointed out that the Appellate Authority by ignoring the decision of the jurisdictional High Court, chose to rely on the decision of the Patna High Court in the case of ***Flipkart Internet Pvt. Ltd. vs. State of Bihar & Ors.***[2]. Here again, Mr. Patkar pointed out that the Appellate Authority did not take cognisance of the Hon'ble Supreme Court's order dated 4 December 2023, staying paragraphs 77 and 78 of the Hon'ble Patna High Court's decision. In effect, therefore, the Appellate Authority has chosen to follow the decision of the Hon'ble Patna High Court, which the Hon'ble Supreme Court has already stayed. For these reasons, Mr. Patkar submitted that the impugned order be set aside, and the Petitioner's appeal be declared to be validly instituted.

6. Mr. Sharma learned counsel for the Respondents submits that the view taken by this Court in ***Oasis Realty (supra)*** is required to be reconsidered because it does not take cognisance or in any event, sufficient cognizance of the provisions of Section 49(4) of the CGST Act and Rule 86(2) of the CGST Rules. He submitted that in terms of Section 49(4), the amount available in the electronic credit ledger can only be used for making payment towards output tax, and that too, subject to such conditions and restrictions as may be prescribed. He then referred to Rule 86(2) to submit that the electronic credit ledger can be debited to the extent of discharge of any liability in accordance with the provisions of Section 49 of the CGST Act. He submitted that a

1 2023 120 GSTR 755 (Bom)
2 2024 132 GSTR 369 (Patna)

pre-deposit for maintainability of an appeal can hardly be styled as any liability of tax, and utilising the ITC from out of such electronic credit ledger cannot be regarded as discharging any liability in accordance with the provisions of Section 49(2) of the CGST Act.

7. Mr. Sharma further pointed out that the stay order issued by the Hon'ble Supreme Court was *ex parte,* and the matter is still pending. He, therefore, submitted that there was nothing wrong in the view taken by the Appellate Authority and in any event, this Court must await the disposal of the proceedings before the Hon'ble Supreme Court.

8. The rival contentions now fall for our determination.

9. The Appellate Authority made the impugned order without giving any notice to the Petitioner about the proposal to non-suit the Petitioner on the ground of alleged non-compliance with the provisions of Section 107(6) of the CGST Act concerning pre-deposit. Since the jurisdictional High Court in ***Oasis Realty (supra)*** had already taken the view that ITC can be utilised for making such a pre-deposit, the least that was expected of the Appellate Authority was to put the Petitioner on notice. Since this was not done, we are satisfied that there was a breach of principles of natural justice, and on this ground, the impugned order deserves to be set aside.

10. However, even if we were to exclude the ground of natural justice, the impugned order warrants interference because the view taken therein is directly opposed to the view taken by this Court in the case of ***Oasis Realty (supra),*** which is, insofar as the Appellate Authority is concerned, the jurisdictional High Court.

11. In ***Oasis Realty (supra)*** the Co-ordinate Bench of this Court comprising K. R. Shriram, J. (as his Lordship then was) and A. S.

Doctor, J. has held that the requirement of pre-deposit of 10% of the disputed tax for an appeal can be complied with by utilising the amount available in the electronic credit ledger i.e. through ITC. Whatever may be the submissions of Mr. Sharma before this Court regarding this Court's view in ***Oasis Realty (supra)*** warranting reconsideration, there can be no doubt that this Court's decision in ***Oasis Realty (supra)*** was binding upon the Appellate Authority and the Appellate Authority was not justified ignoring this decision of the jurisdictional High Court. Such an approach, if countenanced, would be contrary to the judicial or quasi-judicial discipline.

12. Instead, the Appellate Authority chose to rely on the decision of the Patna High Court in the case of ***Flipkart Internet Pvt. Ltd. (supra)***. The decision of the Patna High Court, at the highest, could have held that some persuasive value, in the absence of any decision of the Hon'ble Supreme Court or the jurisdictional High Court. The Patna High Court in paragraph 58 of its judgment has referred to this Court's decision in ***Oasis Realty (supra)***. However, the Patna High Court, after considering the same, has held that it was unable to agree with the view taken by the Bombay High Court.

13. If the Appellate Authority had read the decision of the Patna High Court in its entirety, surely, the Appellate Authority would have realised that its jurisdictional High Court had taken a view contrary to that of the Patna High Court. The Appellate Authority was not at all justified in ignoring the decision of its jurisdictional High Court and following the decision of the Patna High Court in ***Flipkart Internet Pvt. Ltd. (supra)***.

14. Furthermore, if the Appellate Authority were to have bothered to issue a notice to the Petitioner, then the Petitioner, in all probabilities, would not only have relied upon this Court's decision in ***Oasis Realty***

(supra) but also pointed out that the Hon'ble Supreme Court's order dated 4 December 2023 in the appeal instituted by M/s. Flipkart Internet Pvt. Ltd. challenging the Patna High Court's order. The Hon'ble Supreme Court, by its interim order dated 4 December 2023, not only issued notice to the Respondents, but directed that pending the disposal of the matter, "*the observations in paragraphs 77 and 78 of the impugned order shall remain stayed*".

15. The observations in paragraphs 77 and 78 of the Patna High Court's order, which the Hon'ble Supreme Court has now stayed, read as follows:-

> *"77. In view of the consideration above, this court is of the opinion that the appeals filed by the instant petitioners under section 107 of the CGST/BGST Act were not maintainable as the pre-deposit (10 per cent.) as per section 107(6)(b) of the Act, was not complied with by the petitioners.*
>
> *78. The conclusion of the appellate authority that payment of pre-deposit (10 per cent.) can only be made through ECL, requires no interference by this court exercising jurisdiction under article 226 of the Constitution of India."*

16. Thus, Mr. Patkar is justified in contending that the Appellate Authority in this case has not only ignored this Court's decision, i.e., the jurisdictional High Court's judgment and order in ***Oasis Realty (supra),*** but has also ignored the stay order issued by the Hon'ble Supreme Court. All this could have been avoided by at least issuing a notice to the Petitioner so that the Petitioner could have apprised the Appellate Authority of the orders made by this Court and the Hon'ble Supreme Court.

17. Mr. Sharma's contentions about reconsideration do not appeal to us because it is not as if the provisions of Section 49(4) or Rule 86(2) were not considered by the Co-ordinate Bench. These provisions have been specifically considered on Page 757 placitum 3 and 761 placitum 10. In addition, this Court has also considered the CBIC Circular dated 6

July 2022, in which this position was held to have been clarified. Mr. Sharma admitted that this Court's decision in ***Oasis Realty (supra)*** was not challenged by the Respondents before the Hon'ble Supreme Court.

18. The observations in the Patna High Court's decision on the issue with which we are concerned have been stayed by the Hon'ble Supreme Court. The fact that such a stay was granted *ex parte* does not diminish its binding authority. This Court cannot ignore this stay order, though the Appellate Authority in this Court has chosen to ignore the same. Accordingly, we decline the invitation to seek orders for reference of ***Oasis Realty (supra)*** to a larger bench. This is more so because the Hon'ble Supreme Court is now seized of this issue in the case of ***Flipkart Internet Pvt. Ltd. (supra)***.

19. For all the above reasons, we quash and set aside the impugned order dated 18 March 2025 and restore the Petitioner's appeal to the file of the Appellate Authority.

20. The Appellate Authority is now directed to dispose of an appeal on its merits and in accordance with law since, in terms of the Court's decision in ***Oasis Realty (supra)***, the Petitioner has complied with the requirement of pre-deposit prescribed under Section 107(6) of the CGST Act, 2017.

21. All contentions of all parties on the merits of the matter are left open to be decided by the Appellate Authority since we have not adverted to the merits of the rival contentions. The Rule is made absolute in the above terms without any costs order.

22. All concerned must act on an authenticated copy of this order.

(Jitendra Jain, J.) **(M. S. Sonak, J.)**

Signed by: Sayyed Saeed Ali
Designation: PA To Honourable Judge
Date: 16/07/2025 10:43:11