NC: 2025:KHC:31514
WP No. 21409 of 2025

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF AUGUST, 2025

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 21409 OF 2025 (T-RES)

BETWEEN:

M/S. VK BUILDING SERVICES PRIVATE LIMITED
(A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956 AND ALSO UNDER THE PROVISION OF CGST/SGST ACT, 2017), M.142, GROUND FLOOR, 9TH 'A' MAIN, LIC COLONY, HAL III STAGE, J.B.NAGAR, BENGALURU - 560 075.
REPRESENTED BY ITS GENERAL MANAGER (COMMERCIAL AND FINANCE)
SHRI. HARISH SEKAR,
S/O LATE SRI SEKAR KRISHNAMACHARI,
AGED ABOUT 36 YEARS.

...PETITIONER

(BY SRI.MALLIKARJUN N. K., ADVOCATE FOR SRI.SAMPATH A., ADVOCATE)

AND:

1. THE ADDITIONAL COMMISSIONER OF GST, APPEALS I,
OFFICE OF THE COMMISSIONER OF CENTRAL TAX GST APPEALS-I
TRAFFIC AND TRANSIT MANAGEMENT CENTER,
BMTC BUILDING, 4TH FLOOR,
ABOVE BMTC BUS STAND,
DOMLUR, OLD AIRPORT ROAD,
BENGALURU – 560 071.

2. DEPUTY COMMISSIONER OF CENTRAL TAX,
GST, COMMISSIONERATE,
EAST, OLD AIRPORT ROAD,
DOMLUR, BENGALURU – 560 071.

AMENDED VIDE COURT ORDER DATED 29.07.2025.

…RESPONDENTS

(BY SRI. JEEVAN J.NEERALGI, ADVOCATE)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DTD 11.12.2023 PASSED BY THE RESPONDENT IN APPEAL IN GST A.NO.277/2023 GST ADC A1 VIDE ANNX-F AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

Petitioner is before this Court calling in question an order dated 11.12.2023 by which the appeal filed by the petitioner comes to be rejected on the score that the pre-deposit amount that is necessary for entertaining an appeal is paid by electronic mode and not otherwise by way of cash.

2. Heard Sri.Mallikarjun N.K., learned counsel appearing for the petitioner, Sri.Jeevan J Neeralgi, learned counsel appearing for the respondents and have perused the material on record.

3. Learned counsel appearing for the petitioner submits that an identical issue comes up before the Gujarat High Court in ***YASHO INDUSTRIES LTD., vs. UNION OF INDIA*** reported in **(2025) 143 GSTR 553 (Guj)**, the Gujarat High Court goes in detail and sets aside the order of the appellate authority which declines to accept the predeposit in terms of Section 107(6)(b) of the Central Goods and Services Tax Act, 2017 which was made by electronic credit ledger. The Gujarat High Court holds that the electronic transfer must be considered to be valid and the impugned order passed by the Appellate Authority therein was rendered unsustainable. The Gujarat High Court has held as follows:

> "**2.** By way of this petition under article 226 of the Constitution of India, the writ applicant has approached this court with the following reliefs:
>
> "(a) issue an appropriate writ of mandamus or any other writ, order or direction quashing and setting

aside the impugned letter dated April 25, 2023 (Annexure B) in so far as it has been issued arbitrarily and in violation of article 14 of the Constitution;

(b) direct respondents to consider the amount of INR 3,36,82,000 paid by the petitioner-company, towards the mandate of pre-deposit, vide form GST DRC 03 dated February 9, 2021 and December 26, 2022 is sufficient compliance of section 107(6)(b) of the CGST Act and corresponding provisions of the IGST Act;

(c) pending final hearing and disposal of this petition, restraint the respondents from passing any final orders in relation to Appeal No. 11/GST/CP/22-23, dated December 28, 2022, preferred by the petitioner-company before Commissioner (Appeals) CGST and Central Excise Appeals Commissionerate, Surat;

(d) alternatively, direct respondents to refund INR 3,36,82,000 paid vide form GST DRC-03 dated February 9, 2021 and December 26, 2022 (Annexure A);

(e) grant ex parte ad interim relief in terms of prayer clauses (c); and

(f) grant any other and further relief which this honourable court may deem fit and proper in the facts of the present case."

3. The brief facts leading to filing of the present petition can be stated as under:

3.1 The petitioner is public limited company engaged in the business of manufacturing and exporting specialized chemicals such as aroma chemicals, food antioxidants, rubber chemicals and lubricant additives. A substantial portion of the petitioner's products is also exported resulting in significant contribution to the foreign exchange earnings of the country.

3.2 During February 28, 2018 to January 14, 2021, the petitioner-company was availing refund of IGST paid on exports in terms of section 16(3)(b) of the Integrated Goods and Services Tax Act, 2017 ("IGST" Act, for short) as it stood prior to its omission by Finance Act, 2021 besides the IGST exemption conferred by Notification No. 79/2017-Cus., dated October 13, 2017 on import of raw materials incorporated in the manufacture of export/exported goods on the strength of validity issued Advance Authorization Licenses.

3.3 The petitioner-company was precluded from availing benefits of rebate in terms of section 16(3)(b) of the IGST Act if imported goods enjoyed exemptions conferred by NN 79/2017 since October 9, 2018 vide introduction of rule 96(10) of the Central Goods and Services Tax Rules, 2017 ("CGST" Rules, for short) read with Notification No. 54/2018-C.T., dated October 9, 2018.

3.4 Aggrieved by the arbitrariness of the aforesaid precluding provision and corresponding notifications, the petitioner had preferred a writ petition before the Bombay High Court bearing W.P. (L) No. 8839 of 2020 which is pending. Parallelly, the petitioner was compelled to depart from INR 3 crore and reverse, "under protest", the input-tax credit equivalent to INR 3 crore vide form GST DRC-03.

3.5 Thereafter, the respondent continued to pursue their investigation and as a consequence thereof searches were conducted at the premises of the petitioner-company. Thereafter, after recording the statement of Director of the company and upon completion of the investigation, a show-cause notice dated March 16, 2022 was issued demanding the refunded IGST in terms of section 16(3)(b) of the IGST Act along with interest and penalty.

3.6 The petitioner vide detailed reply dated May 23, 2022 and personal hearings dated July 19, 2022 and August 10, 2022 submitted that the matter was Revenue neutral, reversal of IGST exemption for the period from October 2019 to September, 2021 had been effectuated in absence of any contravention of rule 96(10) of the

CGST Rules. However, the respondents vide order dated September 20, 2022 had confirmed the show-cause notice dated March 16, 2022 demanding of tax, penalty and interest.

3.7 Aggrieved by the aforesaid order, the petitioner had preferred appeal before the Commissioner (Appeals) bearing No. 11/GST/CP/22-23 and also deposited the pre-deposit amount to the tune of Rs. 3,36,82,000 in compliance of section 107(6)(b) of the CGST Act utilizing the amount available in the electronic credit ledger vide form GST DRC-03 dated December 26, 2022. However, respondent No. 2 vide impugned letter April 25, 2023 directed the petitioner to pay the pre-deposit through electronic cash ledger and also directed to produce the relevant proof regarding the same before or at the time of attending the personal hearing in the matter.

Being aggrieved by the aforesaid letter, the petitioner approached this court by way of present petition.

4. The learned advocate Mr. Rastogi for the petitioner stated that the issue is squarely covered by the decision of this court dated November 30, 2023 in Special Civil Application No. 22979 of 2022 [*Shiv Crackers* v. *Chief Commissioner of CGST and C.E.*, (2025) 143 GSTR 545 (Guj).] . It was submitted that the similar order is required to be passed in this petition.

5. In view of the above, it would be germane to reproduce the relevant paras of order dated November 30, 2023 [*Shiv Crackers* v. *Chief Commissioner of CGST and C.E.*, (2025) 143 GSTR 545 (Guj).] passed by this court which read as under (page in 125 GSTR):

> "10. Having heard the learned advocates appearing for the respective parties and having gone through the material produced on record, the only question that falls for the consideration of this court is whether the appellant, to comply with the requirement of sub-section (6) of section 107 of the CGST Act of paying a sum equal to ten per cent. of the amount of tax in dispute arising out of the impugned order, can pay the amount utilizing the credit available in the electronic credit ledger ?

11. In our considered opinion, the aforesaid question is no more res integra. The honourable Bombay High Court in the case of *Oasis Realty* [*Oasis Realty* v. *Union of India*, (2023) 120 GSTR 755 (Bom); (2022) 1 HCC (Bom) 126.] , having considered the relevant provisions, held as under (pages 761-763 in 120 GSTR):

> '9. We are not in agreement with the submission made on behalf of the State. This is because clause (b) of sub-section (6) of section 107 provides a precondition, "unless the appellant has paid" (not deposited) a sum equal to ten per cent. of remaining amount of tax in dispute. It says ten per cent. of tax has to be paid as a precondition. That tax can be integrated tax or Central tax or the State tax as in the case at hand, or Union Territory tax. The amount of ITC available in the electronic credit ledger can be utilised towards payment of integrated tax or Central tax or State tax or Union Territory tax.
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> Therefore, in our view, petitioner having to pay ten per cent. of the tax in dispute under clause (b) of sub-section (6) of section 107, can certainly utilise the amount of ITC available in the electronic credit ledger. We hasten to add that in view of provisions of sub-section (3) of section 49, the party may also pay this ten per cent. of the tax in dispute by utilising the amount available in the cash ledger.
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> 10. Moreover, sub-section (4) of section 49 provides the amount available in the electronic credit ledger may be used for making any payment towards output tax under the MGST Act or IGST Act subject to certain restrictions or conditions that may be prescribed. Sub-rule (2) of rule 86 of the MGST Rules provides for debiting of the electronic credit ledger to the extent of discharge of any liability in accordance with the provisions of section 49 of the MGST Act. Further, output tax in relation to a taxable person is defined in clause (82) of section 2 of the MGST Act as the tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism. Therefore, any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the MGST Act can be made by utilisation of the amount available in the electronic credit ledger. Hence, a party can pay ten per cent. of the disputed tax either using the amount available in the electronic cash ledger or the amount available in the electronic credit ledger.
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> Ms. Chavan relied upon an order of the High Court of Orissa at Cuttack in *Jyoti Construction* v. *Deputy Commissioner of CT and GST* [(2022) 96 GSTR 17 (Orissa); 2021 SCC OnLine Ori 1511; (2021) 10 TMI 524.] to submit that the amount in the credit ledger cannot be used to pay the ten per cent. required to be paid under sub-section (6) of section 107 of the

MGST Act. In our view it will not be necessary to discuss the said order because subsequent to the said order the Central Board of Indirect Taxes and Customs, GST Policy Wing, Department of Revenue, Ministry of Finance, Government of India (CBIT and C) has, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017, issued clarification in the form of a circular. This clarification came to be issued in view of various representations that CBIT and C received on utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities. The CBIT and C, in its circular F. No. CBIC-20001/2/2022-GST, dated July 6, 2022 has clarified as under:

Utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities.

1-5…

6. Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws ?	1. In terms of sub-section (4) of section 49 of the CGST Act, the amount available in the electronic credit ledger may be used for making any payment towards output tax under the CGST Act or the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act"), subject to the provisions relating to the order of utilisation of input-tax credit as laid down in section 49B of the CGST Act read with rule 88A of the CGST Rules. 2. Sub-rule (2) of rule 86 of the CGST Rules provides for debiting of the electronic credit ledger to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B of the CGST Act. 3. Further, output tax in relation to a taxable person, (i.e., a person who is registered or liable to be registered under section 22 or section 24 of the CGST Act) is defined in clause (82) of section 2 of the CGST Act as the tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism. 4. Accordingly, it is clarified that any payment towards output tax, whether self-assessed in the return or pay-able 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.

		5. It is further reiterated that as output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment of any tax which is payable under reverse charge mechanism.
7.	Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under GST Laws ?	As per sub-section (4) of section 49, the electronic credit ledger can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.
8.	Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST Laws ?	As per sub-section (3) of section 49 of the CGST Act, the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws.

Therefore, CBIT and C has itself clarified that any amount towards output tax payable, as a consequence of any proceeding instituted under the provisions of GST Laws, can be paid by utilisation of the amount available in the electronic credit ledger of a registered person. The CBIT and C has also requested that suitable trade notices be issued to publicize the contents of the circular.'

12. Keeping in mind the ratio laid down by the honourable Bombay High Court in the case of *Oasis Realty* [*Oasis Realty* v. *Union of India*, (2023) 120 GSTR 755 (Bom); (2022) 1 HCC (Bom) 126.] as well as the Circular dated July 6, 2022 issued by the GST Policy Wing, Central Board of Indirect Taxes and Customs, Ministry of Finance, Government of India, it has been clarified that the payment of pre-deposit can be made by utilizing the Electronic Credit Ledger (ECL).

13. In view of the aforesaid, we hold that the petitioner may utilize the amount available in the electronic credit ledger to pay the ten per cent. of tax in dispute as prescribed under sub-section (6) of section 107 of the CGST Act. Accordingly, the impugned order-in-Appeal No. CR/ADC/APL/147/2022, dated July 25, 2022 passed by respondent No. 2 is hereby

quashed and set aside. The appeal is restored to file on the undertaking of the petitioner that it shall debit the electronic credit ledger within two weeks of this order getting uploaded towards this ten per cent. payable under section 107(6)(b), if not already debited, is accepted.

14. The petition is disposed of accordingly."

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 impugned letter dated April 25, 2023 issued by 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."

4. The said order of the Gujarat High Court was tossed by the Union of India before the Apex Court only to be rejected by affirming the findings rendered by the Division Bench of the High Court of Gujarat by the following order:

"**2.** In Special Leave Petition (C) Nos. 25437/2023 and 324/2024, the assessees have preferred the petitions before this court which have been entertained. When the Revenue has preferred Special Leave Petition (C) D. No. 508/2025, reliance has been placed on the fact that the assessee's petitions have been entertained by this court and therefore on that basis notices were issued in the case of *Chief Commissioner of CGST and C.E.* v. *Shiv Crackers*.

3. Today, Shri Abhishek A Rastogi, learned counsel for the respondent/caveator has brought to our notice the fact that initially notices were issued by this court in the special leave petitions filed by the assessees. The respondent(s) ought not to have relied upon those cases for the purpose of seeking notice(s) in their petitions also. In the circumstances, he submitted that there is no merit in this special leave petition. He also brought to our notice the fact of the rule 96(10) of the CGST has been deleted in the year 2024.

4. We have heard learned counsel for the petitioner(s)/Department. The Department's contention is that since similar matters are pending before this court, this case also may be tagged with those cases.

5. As already noted, the aforesaid cases initially filed before this court are of the assessees and not of the Department. In the circumstances, we find that the impugned order passed by the High Court in R/SCA No. 10504 of 2023 [Reported as *Yasho Industries Limited* v. *Union of India*, (2025) 143 GSTR 553 (Guj).] would not call for any interference. Hence, the special leave petition is dismissed."

5. In the light of the issue standing covered by the judgment rendered by the High Court of Gujarat as affirmed by the Apex Court, the issue in the subject case need not detain this Court for long or delve any further deep into the matter. The petition deserves to succeed with the obliteration of the order of the Appellate Authority and the restoration of the appeal filed by the petitioner on the file of the Appellate Authority.

6. For the aforesaid reasons, the following:

ORDER

[i] The order dated 11.12.2023 passed by the 1st respondent in appeal in GST A.NO.277/2023 GST ADC A1 stands quashed.

[ii] The appeal filed by the petitioner in FORM GST APL-01 dated 29.6.2022 stands restored.

[iii] The Appellate Authority shall answer the appeal on its merit and take the issue to its logical conclusion.

Ordered accordingly and Writ Petition is ***allowed***.

Sd/-
(M.NAGAPRASANNA)
JUDGE

CBC
List No.: 1 Sl No.: 37
CT:SS