

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

**INTERIM APPLICATION NO. 81 OF 2026
IN
WRIT PETITION NO. 3121 OF 2024**

Ncdex E Markets Ltd

...Applicant

Versus

Union Of India

...Respondents

Mr. V. Sridharan, a/w Adv. Rajesh Ostwal, Adv. Sriram Sridharan, a/w Adv. Aditi Jain, for Applicant/Petitioner.

Mr. Jitendra B. Mishra, a/w Mr. Ashutosh Mishra, Mr. Rupesh Dubey, for Respondents.

**CORAM : R. I. CHAGLA AND
ADVAIT M. SETHNA, JJ.**

DATED : 5 MAY, 2026

PC.:-

1. By this Interim Application, the Applicant has sought modification of the interim order dated 9 December 2025, to the effect that the condition to make payment of deposit of 10% be waived.
2. By the interim order dated 9 December 2025, which had been passed by the previous Bench, of which one of us (Advait M. Sethna, J.) was a member, this Court observed that, in the event an appeal was preferred, then, the Applicant would be required to make a mandatory pre-deposit of

10% of the tax amount demanded. Accordingly, the Bench held that, while entertaining the present petition and confirming the ad-interim relief granted by order dated 7 March 2025, the Applicant must deposit 10% of the tax amount within four weeks from the date of the said order. If this amount was not deposited, the interim relief granted would stand vacated without further reference of this Court.

3. Mr. Sridharan, learned counsel appearing for the Applicant, has brought to the notice of this Bench that certain vital aspects of the matter had not been inadvertently, brought to the attention of the Bench which had passed the order dated 9 December 2025 viz that a portion of the disputed amount had been paid by the Applicant under protest. He has submitted that this is required to be taken into consideration in determining the statutory requirement of pre- deposit under Section 107 (6)(b) of the Central Goods and Services Tax Act, 2017 (“**CGST Act, 2017**” for short). He has placed reliance upon the judgment of the Supreme Court in *VVF (India) Ltd. v. State of Maharashtra & Ors*¹, wherein the Supreme Court considered a similar statutory requirement of pre-deposit of an amount equal to 10% of the disputed tax liability by the Appellant under the Maharashtra Value Added Tax Act, 2002 (“**MVAT Act**” for short).

4. In that context, the Supreme Court considered that, based on the plain language of the statute, 10% of the entire disputed tax liability would

1. (2022) 13 SCC 644

have to be deposited pursuant to Section 26(6A) of the MVAT Act. The amount 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 a payment made under protest should not be set off against the deposit amount, it would have made a provision to that effect namely, that 10% of the tax in arrears is required to be deposited which is not the case. Accordingly, the Supreme Court took into account the amount paid under protest and held that the rejection of the appeal on such ground of pre-deposit requirement was not in order. The appeal would therefore have to be restored to the file of the Appellate Authority, subject to due verification that 10% of the disputed tax amount.

5. Mr. Sridharan has referred to the impugned order in the present case, wherein the Adjudicating Authority has observed that the disputed tax liabilities relates to the period from 1 October 2018 to March 2022. The Authority further held that the TCS self-assessed, already collected and paid from April 2021 onwards for certain taxable supplies, has not been included in the quantification for the said period, which comes to Rs. 3,76,33,56,706/- (Rupees Three Hundred Seventy-Six Crore Thirty-Three Lakh Fifty-Six Thousand Seven Hundred Six only).

6. He has also referred to the submissions of the Applicant herein,

stating that, as a matter of abundant caution and practice, the Applicant had started collecting 'Tax Collected at Source' (TCS) Under Protest for the relevant transactions with effect from 1 April 2021. He further submitted that it is not in dispute that the TCS collected by the Applicant from April 2021 was paid under protest, and that such payment was towards the disputed tax liabilities of about Rs. 400 Crores. He has accordingly submitted that, in view of the aforementioned judgment of the Supreme Court, this amount is required to be taken into consideration while determining whether the statutory deposit of 10% is required to be made by the Applicant, and that the amount paid under protest is required to be duly adjusted against the said 10% statutory requirement. He has further submitted that, if the amount paid under protest, viz Rs. 30,81,91,182/-, is taken into consideration, it exceeds the ceiling of Rs. 20 Crores which is to be deposited as prescribed under Section 107(6)(b) of the CGST Act, 2017.

7. Mr. Mishra, learned counsel appearing for the Respondents, has relied upon paragraph 31(c) of the impugned order of the Adjudicating Authority, which considers the reply dated 28 August 2023 filed by the Applicant. The Adjudicating Authority has observed that the payment of TCS from April 2021 may not constitute an admission of past liability, but it certainly amounts to an admission of liability from April 2021 onwards, particularly since there is no provision under the GST law to make payment of tax liabilities under protest. He has further submitted that, in light of this

finding, the amount of TCS paid by the Applicant from April 2021 cannot be treated as a disputed liability; rather, by making such payment, the Applicant has accepted it as an admitted liability. Accordingly, he submits that the payment of TCS by the Applicant would fall within the ambit of Section 107(6)(a) of the CGST Act, 2017, mandating 10% pre- deposit.

8. Having considered the submission, and taking note of the fact that the contention now made by Mr. Sridharan on behalf of the Applicant was not made before the previous Bench, the same merits consideration. We find that there is merit in the submission of Mr. Sridharan, particularly considering that it is an undisputed fact that the Applicant had made payments and collected tax at source under protest for the relevant transactions with effect from 1 April 2021, and that the TCS self-assessed had been collected and paid from April 2021 onwards for the same. This was during the period of disputed liability, as per the findings of the Adjudicating Authority, i.e., from 1 October 2018 to March 2022. The TCS self-assessed, already collected and paid from 2021 onwards, was not included in the quantification.

9. Although, Mr. Mishra, learned counsel for the Respondents, has referred to paragraph 31(c) of the impugned order of the Adjudicating Authority which refers to the payment of TCS from April 2021 and holds that this may not constitute an admission of past liability but is certainly

admission of liability from April 2021 onwards, as there is no provision under the GST law for payment of tax liabilities under protest, the factual aspect of the payment of TCS was made under protest is not disputed. The legal issue as to whether, in the absence of any provision under the GST law permitting payment of tax liabilities under protest, such payment can be so characterized is to be determined at the hearing of the Petition

10. The Supreme Court in **VVF (India)** (Supra) has considered a similar provision as Section 107(6)(b) of the CGST Act, 2017 viz. Section 26(6A) (c) of MVAT Act which provided that in appeal against an order, an amount equal to 10% of the amount of tax disputed is to be deposited by the Appellant. The Supreme Court considered that an amount had been deposited by the appellant anterior to the assessment order and held that such an amount cannot be excluded from consideration in the absence of any statutory provision to that effect. It was further held that an amount paid under protest must be taken into account, and the requirement of depositing 10% of the disputed tax amount is required to be verified. In our *prima facie* view, the said judgment of the Supreme Court is applicable in the present case.

11. In the given case as well, the Applicant has admittedly deposited an amount of Rs. 30,81,91,182/- under protest. This amount would require to be taken into consideration while determining whether the Applicant is required to pre-deposit 10% of the taxable amount in dispute, as provided

under Section 107(6)(b) of the CGST Act, 2017. This requirement is subject to a maximum of Rupees Twenty Crore as stipulated therein. Given that the Applicant has already paid Rs. 30,81,91,182/- under protest in respect of the disputed amount, *prima facie*, we find that the Applicant has complied with the 10% requirement under Section 107(6)(b) of the CGST Act, 2017.

12. For the above reasons, we modify our earlier order dated 9 December 2025 to the extent the Applicant in our *prima facie* view, has fulfilled the statutory requirement of pre- deposit under Section 107(6)(b) of CGST Act, 2017 and in view thereof there is no further requirement to deposit 10% of tax amount demanded under the impugned order of the Adjudicating Authority. The Petition can now be heard on its merits and in accordance with law.

13. Interim Application No. 81 of 2026 is accordingly disposed of.

[ADVAIT M. SETHNA, J.]

[R.I. CHAGLA, J.]