

**HIGH COURT OF TRIPURA
AGARTALA**

W.P(C) 798/2023

Sri Basudeb Chakraborty

----Petitioner(s)

Versus

Union of India and ors.

----Respondent(s)

For Appellant (s)	:	Mr. BN Majumder, Sr. Advocate Mr. B. Paul, Advocate
For Respondent(s)	:	Mr. Paramartha Datta, Advocate Mr. B. Majumder, Deputy SGI

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

HON'BLE MR. JUSTICE ARINDAM LODH

Order

31/01/2024

Heard learned senior counsel for the petitioner and learned counsel for the CGST, Mr. P. Datta.

Proceeding under Section 74(1) of the CGST Act was initiated against the petitioner vide notice dated 05.11.2020 for having availed transitional credit in an illegal manner.

The dispute was in relation to certain sale invoices issued by the supplier-Vodafone for the period 2016-17, 2017-18. The petitioner appeared and contested the SCN. However, the adjudicating authority vide order in original dated 20.05.2022 (Annexure 3) held him responsible for illegally availing transitional credit to the extent of Rs.2,13,269/- alongwith interest under Section 50(3) and penalty under Section 74(9) of the CGST Act, 2017, confirming the proposed tax due, interest and penalty indicated in the SCN. The petitioner preferred an appeal before the appellate authority under Section 107(1) read with Section 107(4) of the CGST Act. He contended that pre-deposit was made manually through challan. However, learned appellate court after few virtual hearings dismissed the appeal with the following findings:

"6. FINDINGS

6.1 I have carefully gone through the Appeal Memorandum, the impugned Order and various submissions made by the appellant verbally during personal hearing as well as in writing.

6.2 It is on record that the impugned order was issued on 20.05.2022 and the Appellant has claimed to have received the same on 24.05.2022. The instant appeal has been filed on 26.08.2022. Here I like to discuss on the relevant provisions of Section 107 of the CGST Act, 2017, which is reproduced hereunder:-

"Section 107. Appeals to Appellate Authority.

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority

may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

.....

.....

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

.....

.....

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, [subject to a maximum of twenty-five crore rupees], in relation to which the appeal has been filed.

Provided that no appeal shall be filed against an order under sub-section (3) of section 129 unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.

From these facts it is apparent that the appeal in hand has not been filed by the appellant within the stipulated time of 03(Three) months as prescribed under Section 107(1) of the CGST Act, 2017. However, it appears that the said appeal memorandum was dispatched by the appellant through speed post on 19.08.2022, which was received on 26.08.2023. considering above, I condone the said delay of 05(days) in terms of Section 107(4) of the CGST Act, 2017.

On the issue of pre-deposit, I find that it is mandatory for the appellant before filing appeal to the appellate authority to pay as pre-deposit 10% of the disputed tax as provided under Sub-section(6) of Section 107 of the CGST Act, 2017. The appellant in his appeal petition, stated that he had paid the mandatory pre-deposit of Rs. 21,327/- on 17.08.2023. But on perusal of the records it appears that the appellant had credited the amount of pre-deposit in his Electronic Cash Ledger through Challan dated 17.08.2023 only but the same has not been paid/debited from Electronic Cash/Credit Ledger. On being raised with the Authorized Representative of the appellant during personal hearing on the validity of the pre-deposit made, they have sent a copy of Electronic Cash Ledger and Electronic Credit Ledger for the period 01.08.2022 to 31.12.2022. But in the same also, it is observed that no such debit entry of pre-deposit was found. From above it is clear that despite giving opportunities, the appellant failed to provide the evidences for compliance of Section 107(6) of the CGST Act, 2017.

7. In light of the above discussions and findings, I am not inclined to take up this case on merit, as the provisions of Section 107(6) of the Act ibid, has not been complied with, which is mandatory for filing appeal.

ORDER

8. Therefore, in exercise of the power conferred upon me section 107(11) of the CGST Act, 2017, I reject the instant appeal and thus the appeal is disposed of accordingly."

The learned appellate authority found that in terms of Section 107(6) of the Act, the pre-deposit @10% of the disputed tax amount i.e. Rs.21,327/- was not credited through his electronic credit ledger/cash ledger.

Learned senior counsel for the petitioner has referred to Annexure-7, which according to him, is the proof of deposit of pre-deposit of Rs.21,327/- on 17th August, 2022.

The learned appellate authority, however, after scrutinizing the copy of the electronic cash ledger and electronic credit ledger for the period 01.08.2022 to 31.12.2022, did not found that the same had been paid or debited in such manner. It, therefore, held that the appellant failed to provide evidence for

compliance of Section 107(6) of the CGST Act, 2017 after giving opportunity. As such, the appeal was dismissed.

Learned counsel for the petitioner submits that though such deposit was made through challan, but if one opportunity is granted, the petitioner is ready to make pre-deposit through electronic credit ledger. The amount is very small.

Learned counsel for the CGST, Mr. Datta, submits that if the court is so satisfied, the matter may be remitted to the appellate authority upon making of pre-deposit by the petitioner-appellant herein through his electronic credit ledger.

Having considered the submissions of learned counsel for the parties in the limited gamut of facts and the narrow issue involved herein, we, feel it proper to remit the matter to the appellate authority on the undertaking of the petitioner that he would make the necessary pre-deposit within a period of 2 (two) weeks from today through his electronic credit ledger. On making of such pre-deposit within the time stipulated above, the learned appellate authority would consider his appeal in accordance with law. Accordingly, the impugned appellate order dated 27.10.2023 is set-aside. However, if the petitioner fails to make the pre-deposit within the aforesaid time, the impugned appellate order shall stand revived.

The petition is disposed of in the aforesaid terms.

(ARINDAM LODH),J

(APARESH KUMAR SINGH), CJ