

Balance under the Electronic Credit Ledger cannot be utilised for mandatory pre deposit under the erstwhile regime - CESTAT

15 September 2022



Summary

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) Allahabad bench has held that the payment of mandatory pre-deposit for filing an appeal under the erstwhile Excise Law cannot be made by utilising the balance under the Electronic Credit Ledger (ECrL) maintained under the GST regime. The Commissioner (Appeals) rejected the appeal filed by the appellant on the grounds that the appellant had made the mandatory pre-deposit under the erstwhile Excise Law by way of reversal of the Central GST (CGST) credit appearing in its Form GSTR-3B. The CESTAT stated that the GST law provides that the balance under the ECrL can only be utilised for payment of self-assessed output tax liability.

Facts of the case

- The appellant¹ had filed an appeal under the Central Excise Act, 1944 (erstwhile Excise Law) before the Commissioner (Appeals). Accordingly, it made a pre-deposit of 7.5% of the disputed amount by way of reversal of Input Tax Credit (ITC) under Central Goods and Services Tax Act, 2017 (CGST Act) in its GSTR-3B.
- The Commissioner (Appeals) rejected the appeal on the ground that the pre-deposit had not been made in accordance with the erstwhile Excise Law².
- The Registry had pointed out two defects in the appeal, out of which one has been cured and for other, the appellant submitted that there is no defect as part amount has been paid by way of reversal of credit in GSTR-3B and partly in cash.
- Aggrieved by the rejection of the appeal, the appellant filed an appeal³ before the CESTAT, Allahabad by depositing an

additional 2.5% of the impugned amount vide DRC-03 challan.

Allahabad CESTAT observations and ruling⁴:

- **ECrL can be utilised only for self-assessed output tax:** As per the GST law⁵, the credit lying in ECRL can be utilised only for the payment of self-assessed output tax. The output tax liability cannot be equated to the mandatory pre-deposit required to be made under the GST law⁶. Further, it cannot be debited for making payment of pre-deposit at the time of filing of the appeal⁷.
- **Order of High Court is binding on the Tribunal:** The Tribunal had held that the mandatory pre-deposit can be made through the CGST credit but such order was an interim order⁸. Further, in another case the HC has held that under the GST law there is no provision for utilisation of CENVAT Credit, other than for payment of self-assessed output tax. Further, the decision of the HC is binding on the

¹ M/s Johnson Mathey Chemical India Pvt Ltd

² Section 35F of Central Excise Act, 1944

³ Defect Diary No.701942022

⁴ dated 23 August 2022

⁵ Section 41 of CGST Act, 2017

⁶ Jyoti Construction – Orissa HC

⁷ Section 107 (6) of the CGST Act, 2017

⁸ Dell International Services India Pvt. Ltd.

Tribunal and the appellant has not produced any judgment of any other HC which supports its contention.

- **Pre-deposit cannot be made from ECrL:** The CESTAT held that the mandatory pre-deposit cannot be made by way of debit in the ECrL maintained under the GST law.

Our comments:

In the case of M/s Jyoti Construction, the Orissa HC had held that the payment of mandatory pre-deposit cannot be made out from balance of the ECrL. The GST law has no provision for the utilisation of CENVAT credit, other than for payment of self-assessed output tax.

However, in the case of M/s Dell International Services India Pvt Ltd, the Bangalore bench of the CESTAT had held that the mandatory pre-deposit can be made by way of debit to the balance of ECrL.

Recently, the Central Board of Indirect Taxes and Customs (CBIC)⁹ had clarified that the GST ITC can be utilised for self-assessed liability or the amount payable as a consequence of any proceeding instituted under the GST law. Further, it is pertinent to note that there is no explicit bar in utilising the credit available in the ECrL for making the pre-deposit for filing an appeal under the GST Act.

Therefore, the government should consider issuing a suitable clarification on the issue to avoid unnecessary litigations.

⁹ vide Circular No. 172/04/2022 6 July 2022

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI

National Office,
Outer Circle,
L 41, Connaught Circus,
New Delhi - 110001
T +91 11 4278 7070

NEW DELHI

6th Floor, Worldmark 2,
Aerocity,
New Delhi - 110037
T +91 11 4952 7400

AHMEDABAD

Unit No - 603 B, 6th
Floor,
Brigade International
Financial Center,
GIFT City Gandhinagar,
Ahmedabad - 382355
T +91 79 6900 2600

BENGALURU

5th Floor, 65/2, Block A,
Bagmane Tridib,
Bagmane Tech Park,
CV Raman Nagar,
Bengaluru - 560093
T +91 804 243 0700

CHANDIGARH

B-406A, 4th Floor,
L&T Elante Office
Building,
Industrial Area Phase I,
Chandigarh - 160002
T +91 172 433 8000

CHENNAI

9th floor, A wing, Prestige
Polygon, 471 Anna Salai,
Mylapore
Division, Teynampet,
Chennai - 600035
T +91 44 4294 0000

DEHRADUN

Suite No 2211, 2nd Floor,
Building 2000, Michigan
Avenue,
Doon Express Business
Park,
Subhash Nagar,
Dehradun - 248002
T +91 135 264 6500

GURGAON

21st Floor, DLF Square,
Jacaranda Marg,
DLF Phase II,
Gurgaon - 122002
T +91 124 462 8000

HYDERABAD

Unit No - 1, 10th Floor,
My Home Twitza, APIIC,
Hyderabad Knowledge
City,
Hyderabad - 500081
T +91 40 6630 8200

KOCHI

6th Floor, Modayil Centre
Point, Warriam Road
Junction,
MG Road
Kochi - 682016
T +91 484 406 4541

KOLKATA

Unit 1603 & 1604,
EcoCentre,
Plot no. 4, Street Number
13,
EM Block, Sector V,
Bidhannagar,
Kolkata, West Bengal
700091
T +91 033 4444 9300

MUMBAI

11th Floor, Tower II,
One International Center,
SB Marg Prabhadevi (W),
Mumbai - 400013
T +91 22 6626 2600

MUMBAI

Kaledonia, 1st Floor,
C Wing,
(Opposite J&J Office),
Sahar Road, Andheri
East,
Mumbai - 400069

NOIDA

Plot No 19A, 2nd Floor,
Sector - 16A,
Noida - 201301
T +91 120 485 5900

PUNE

3rd Floor, Unit No 310-
312,
West Wing, Nyati Unitree,
Nagar Road, Yerwada
Pune - 411006
T +91 20 6744 8800

For more information or for any queries, write to us at GTBharat@in.gt.com

© 2022 Grant Thornton Bharat LLP. All rights reserved.

"Grant Thornton Bharat" means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.



Follow us @GrantThorntonIN