CNK & Associates LLP
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GST Judicial Decisions

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Validity of pre-deposit paid through electronic credit ledger

Raiyan Traders v/s State of Bihar
(2025) 107 GST 86 (Patna)
In favour of taxpayer

Relevant facts

The taxpayer, preferred an appeal against the assessment order, duly depositing 10% of the disputed tax through the Electronic Credit Ledger **(ECrL)** as pre-deposit. However, the Appellate Authority rejected the appeal on the ground that pre-deposit ought to have been made exclusively from the Electronic Cash Ledger **(ECL)**. While passing such an order, the Appellate Authority had relied on the decision of the Division Bench of the Hon'ble Patna High Court in the case of Flipkart Internet Private Limited v/s State of Bihar[1].

In the instant case, the Hon'ble Patna High Court noted that the Central Government, through Notification No. 53/2023 – Central Tax dated 2nd November 2023, had permitted belated filing of appeals on the condition that the appellant makes a pre-deposit of 12.5% (as against 10%) of the disputed tax of which a minimum of 2.5% should be paid through the ECL and the balance through the ECrL.

Decision of the Hon'ble Patna High Court

- The Hon'ble Supreme Court has stayed the ruling of the Division Bench of the Hon'ble Patna High Court in the case of Flipkart Internet Private Limited v/s State of Bihar (supra) and the matter is pending a final decision[2].
- Notification No. 53/2023 – Central Tax dated 2nd November 2023 also recognises payment of pre-deposit through the ECrL.
- Payment of pre-deposit is allowed to be made through the ECrL.
- Matter is remanded for fresh consideration.

CNK comments

While delivering this judgement, the Hon'ble Patna Court made a specific mention that they are not differing from the decision of the Division Bench in the case of Flipkart (supra). However, since the Supreme Court has stayed the operative part of the order, and the question raised in the present Writ is consideration of the appeal on merits, the Writ has been allowed, and the matter is remanded for fresh consideration on merits. One will have to wait for the final disposal of the appeal by the Hon'ble Supreme Court for clarity on this issue.

Blocking of Electronic Credit Ledger without opportunity of being heard

Klassic Traders v/s Secretary to Government, Department of Revenue
(2025) 107 GST 41 (Karnataka)
In favour of taxpayer

Relevant facts

The taxpayer challenged an order that blocked their ECrL under Rule 86A of the Central Goods Services Tax Rules, 2017 **(CGST Rules)**. The impugned order, dated 6th June 2024, was issued without granting the taxpayer an opportunity of being heard. Furthermore, the order also failed to establish independent and cogent "reasons to believe" as to what warranted the blocking of ECrL. The decision was based entirely on a report by the Enforcement Authority.

The Hon'ble Karnataka High Court relied on the decision of its Division Bench in the case of K-9 Enterprises v/s State of Karnataka[3] and held that the Adjudicating Authority is not entitled to place reliance on the 'borrowed satisfaction' of another officer and pass orders without making an independent inquiry.

Decision of the Hon'ble Karnataka High Court

- The Authorities must have independent and cogent reasons to invoke Rule 86A of the CGST Rules, and reliance placed on external reports without verification is legally impermissible.

[1] (2023) 13 Centax 83 (Pat.)/2024 (80) G.S.T.L. 257 (Pat.) [19-09-2023]

[2] (2023) 13 Centax 103 (S.C.)/2024 (80) G.S.T.L. 3 (S.C.) [04-12-2023]

[3] [2023] 153 taxmann.com 351

- The absence of a pre-decisional hearing rendered the order unsustainable.
- The tax authorities should immediately unblock the ECrL, allowing the taxpayer to use their input tax credit **(ITC)**.
- The Revenue department was given the liberty to proceed against the taxpayer only after following legal procedures.

CNK comments

The Hon'ble Karnataka High Court has once again reaffirmed the necessity of an independent investigation by the adjudicating officer and not mere reliance on the report of another officer. The adjudicating officer ought to be satisfied (based on their own inquiry and findings) that there exists circumstances which warrant the blocking of the ECrL. 'Borrowed satisfaction' is impermissible and should not impinge on the taxpayer's rights under the GST framework. Another takeaway from this judgement is that the order should document the reasons which led to the conclusion that the ECrL ought to be blocked.

Writ petition filed against demand order despite appeal provisions in GST law

Marjina Bibi v/s State of Assam
[2025] 107 GST 450 (Gauhati)
In favour of Revenue

Relevant facts

The taxpayer filed a writ before the Hon'ble Gauhati High Court on grounds of violation of principles of natural justice. The taxpayer contended that the Adjudicating Authority did not entertain their request for adjourning the personal hearing by 4 weeks and instead passed the order in original confirming the demand as per the show cause notice **(SCN)**. The issue cited in the SCN was regarding discrepancies in the ITC claims in the returns filed by the taxpayer. Since the taxpayer had claimed refund of ITC (against zero-rated supplies), the Revenue proceeded to freeze the taxpayers bank account even before issuance of the SCN which the taxpayer cited as unfair procedural practice.

Defending its actions, the Revenue contended that after filing a reply to the SCN seeking 4 weeks to submit an 'effective reply', the taxpayer did not follow it up with such a reply. After the lapse of a reasonable period of time, they proceeded to issue the impugned order. Further, it is the contention of the Revenue that the taxpayer has mentioned that they did not need any personal hearing. Hence, there is no question of any violation of the principles of natural justice. Since the taxpayer has an adequate, efficacious and statutory remedy of filing an appeal against the order and the fact that no exceptional case has been made out by the taxpayer, the writ is not maintainable. With regard to freezing the bank account, it was done as it posed a grave threat to the interest of the Revenue.

The Hon'ble Gauhati High Court listed the following exceptions to the rule of alternate remedy:

i) Writ is filed for enforcement of fundamental rights guaranteed by the Constitution
ii) There has been a violation of the principles of natural justice
iii) The order or proceedings are wholly without jurisdiction
iv) The vires of the legislation is challenged

Decision of the Hon'ble Gauhati High Court

- "There is a distinction between a case where there is total violation of the rule of *audi alteram partem* with no notice and no opportunity of hearing and a case where there is a violation of a facet of the rule of *audi alteram partem* in that the assessee was not afforded any adequate and effective notice and/ or reasonable opportunity of hearing. It does not emerge from the facts of the case that the petitioner was not provided with any kind of prior opportunity and hearing before issuance of the impugned order-in-original"
- "In the case in hand, with the petitioner did not avail the opportunity of submitting an effective reply to the SCN after seeking time for 4 weeks and declined to avail any personal hearing. In such scenario, it is not open for the petitioner to raise a ground that it was a case of no notice and no opportunity of hearing."

- The taxpayer was permitted to file an appeal before the Appellate Authority without making payment of the pre-deposit amount, provided the frozen bank account contains funds equivalent to the required pre-deposit amount.

CNK comments

There has been a spate of writ petitions filed before the High Courts seeking relief against the orders of the Adjudicating Authority. The High Courts have on several occasions dismissed the writs on grounds of alternate remedy being available in the statute. In this case, the Hon'ble Gauhati High Court has listed the exceptions to the rule of alternate remedy which is an appreciable insight into how the Courts decide on whether or not to entertain a writ application.

Order issued for ITC availed under wrong tax head

Rejimon Padickapparambil Alex v/s Union of India

[2025] 107 GST 483 (Kerala)

In favour of taxpayer

Relevant facts

The taxpayer filed an appeal before the Division Bench of the Hon'ble Kerala High Court against the order of a single Judge of the same Court. The issue was that the taxpayer had erroneously reported credit availment of CGST and State Goods and Services Tax **(SGST)** instead of Integrated Goods and Services Tax **(IGST)** in the return in Form GSTR-3B during the financial year 2017-18. The Assessing Authority noted this mismatch and opined that the taxpayer has utilised 'unavailable credit' and proceeded to issue a notice demanding reversal of CGST and SGST which culminated in an order that was challenged by the taxpayer by way of a writ. It is to be noted that under abundant caution, the taxpayer had demanded a refund of the amounts demanded from him. The single member Judge did not delve into the merits but directed the Revenue to consider and pass orders on the refund application filed by the taxpayer.

In the appeal before the Division Bench, the taxpayer argued on the grounds of revenue neutrality and stated that there was no doubt on the eligibility of credit. The only mistake was that instead of availing credit of IGST, the taxpayer availed credit of CGST and SGST of the equivalent amount. The High Court referred to an order of the Assistant Commissioner of Central Tax in Bengaluru which dealt with an identical issue.

Decision of the Hon'ble Kerala High Court

- There is no wrong availment of credit, and that the only mistake committed by the taxpayer was an inadvertent and technical one.
- The taxpayer should not be seen as having availed excess credit for the purposes of initiating proceedings under Section 73 of the CGST Act.
- The order issued under Section 73 of the CGST Act is quashed.

The Hon'ble High Court also allayed the fear of Revenue's loss of revenue share, if any, by stating that a copy of this judgment be produced before the GST Council who shall issue necessary directions to resolve the issue by noting the declaration in this judgment.

CNK comments

The Hon'ble Kerala High Court applauded the Assistant Commissioner, Bengaluru who passed the order referred to by this Court. The Division Bench mentioned "… such Orders demonstrate that revenue officials, even at the level of Assistant Commissioners, who are the first point of contact between an assessee and the Revenue department, are capable of rendering timely and effective justice in our country which is known for its huge backlog of cases."

This is a welcome breath of fresh air to receive such positive orders from the lower rungs of the Revenue hierarchy which are relied upon and confirmed by the High Court. This judgment shall be useful in a number of cases where taxpayers are saddled with uncalled litigation on this issue.

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