

TAX INFO

Dated 03/06/2022

Latest update on GST Law: The form GST-DRC-03 permit deposit of amount through cash/credit of the ITC ledgers. Section 49 of GST Act permits availing of the amount in electronic ledger for making any payments towards output tax under the Act.

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Name of Petitioner	Amit Gupta
Name of Respondent	Directorate General Of GST Intelligence Headquarters
Court	High Court Of Delhi
Date of Judgement	29.04.2022
Appeal No.	W.P.(CRL) 1267/2021

Brief Facts of the Case Law:

The petitioner is one of the Directors/key persons in 3 companies and allegedly the mastermind behind devising a mechanism of availing ITC on the strength of bills of various suppliers which were non-existing and fictitious and thus availed fraudulent ITC of Rs. 27.05 crores which he further passed on. Further the total ITC availed by the petitioner in the three companies mentioned above was totalling to Rs. 260 crores. After the arrest, the petitioner was granted regular bail vide order dated 23rd December, 2019 on his furnishing a personal bond in the sum of Rs.1 lakh with one surety that he shall deposit the amount of Rs. 2,70,00,000/- with the complainant department. The petitioner deposited Rs. 1.10 crores through cash ledger and Rs. 1.60 crores by way of debiting through electronic ITC ledger. The order dated 9th July, 2021 passed by the learned CMM, Patiala House Courts whereby the bail granted to the petitioner vide order dated 23rd December, 2019 was cancelled by the learned CMM.

Contention of the Authorities:

Since the ITC availed were through fraudulent means and thus the entire ITC claimed by the companies were under cloud, therefore, the petitioner could not have furnished Rs. 1.60 crores by reversal of the ITC as a condition of bail. Since the learned Trial Court directed the petitioner to deposit the amount of Rs. 2.70 crores, he could not have availed the amount of Rs. 1.60 crores by debiting the ITCs.

Contention of the Petitioner:

The form GST-DRC-03 issued under Rule 142(2) and 142(3) of the GST Rules permit deposit of amount through cash/credit of the ITC ledgers. Section 49 of GST Act permits availing of the amount in electronic ledger for making any payments towards output tax under the Act. The petitioner has to his credit ITC of Rs. 260 crores and till date approximately Rs. 42 crores of ITCs have been found to be fraudulent which are pending investigation by DGCI, Meerut, the rest of the ITC have not been found to be fraudulent based on the invoices from non-existing suppliers. Hence the reversal of the ITC credit for depositing the part amount of Rs. 2.70 crores with the department as directed by the learned Trial Court cannot be said to be illegal or unwarranted, warranting cancellation of the bail granted to the petitioner.

Decision of the Court:

The non-compliance of the conditions of bail is a ground for cancellation of the same. However, in the present case the condition was to deposit a sum of Rs. 2.70 crores with the department. The petitioner having fulfilled the condition of deposit of the amount partly by cash ledger and partly by debit ledger of the ITC, it cannot be said that the petitioner has failed to fulfil the conditions imposed on him.

The impugned order dated 9th July, 2021 passed by the learned CMM, Patiala House Court was set aside.

Suresh Aggarwal, Advocate

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