

# TAX INFO

Dated 24/12/2022

Latest update on GST Law: **Electronic Credit Ledger cannot be debited when appeal has already been filed against the impugned order** as given in judgement by **Calcutta High Court**.

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<b>Name of Petitioner</b>	S D Enterprises
<b>Name of Respondent</b>	Assistant Commissioner, Bureau of Investigation
<b>Court</b>	CalcuttaHigh Court
<b>Date of Judgement</b>	13-07-2022
<b>Appeal No.</b>	WPA 1205 of 2022

## **Brief Facts of the Case Law:**

The principal grievance of the writ petitioner in this writ petition is that an amount of Rs.4,23,96,938/- comprising the Central tax, State tax and cess has been debited from the electronic credit ledger account of the petitioner. The petitioner claims that he has preferred a statutory appeal before the Joint Commissioner of Sales Tax, challenging the adjudication order dated December 3, 2021. The petitioner has deposited a further sum of Rs.8,60,594/- on April 5, 2022 on account of CGST, SGST and cess which is 10% of the amount in dispute in terms of Section 107(6)(b) of the CGST Act, 2017.

## **Contention of the Petitioner:**

Since the petitioner has approached the appellate authority under the statute and has complied with the provisions regarding deposit of a portion of the disputed amount of tax, the authorities could not have debited the aforesaid amount from the electronic credit ledger account of the petitioner. The provisions laid down in Section 107(7) of the CGST Act makes it clear that upon payment of the amount in terms of sub-Section (6), the recovery proceedings for the balance amount shall be deemed to be stayed. Thus, authorities acted illegally and arbitrarily by debiting the aforesaid amount from the electronic credit ledger account of the petitioner. The petitioner is suffering severe prejudice as he is being prevented from utilizing the balance in his electronic credit ledger account though, as per law, he is entitled to utilize the same.

## **Contention of the Department:**

The authorities submits that the petitioner preferred the appeal after expiry of the statutory period of limitation and the concerned Recovery Officer cannot be faulted with for debiting the amount from the electronic credit ledger account of the petitioner as no information was available in the portal as to whether the petitioner has preferred any appeal against the order of adjudication.

## **Findings and Decision of the Court:**

The petitioner has preferred an appeal before the appellate authority under the CGST Act against the order of adjudication dated December 3, 2021. There is some delay in preferring the said appeal but the period of limitation being extended by the Hon'ble Supreme Court in a suo motu writ petition being Miscellaneous Application No.29 of 2022 and in Miscellaneous Application No.665 2021 in SMW (C) No.3 of 2022, the authorities cannot contend that the appeal was filed beyond the prescribed period of limitation.

Since it is not in dispute that the petitioner has complied with the provisions laid down in Section 107(6)(b) of the CGST Act, it necessarily follows that the recovery proceedings for the balance amount shall be deemed to be stayed. Therefore, the interest of the revenue has been well protected in the manner as specifically provided in the statute.

Thus, this Court directed the authorities to restore back the amount which was debited from the electronic credit ledger account of the petitioner on March 7, 2022 within a period of two weeks from date.

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