



2026:AHC:14917

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 8208 of 2025

M/S Excel Vehicles (A Unit Of My Auto World
Kanpur Private Limited)

.....Petitioner(s)

Versus

Union Of India And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Akashi Agrawal, Sr. Advocate	
Counsel for Respondent(s)	:	A.S.G.I., Dhananjay	Awasthi,
		Sudarshan Singh	

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Post nomination by Hon'ble the Chief Justice by order dated 15.01.2026, the matter is before this Court.
2. Heard Sri Rahul Agrawal, learned Senior Counsel assisted by Sri Akashi Agrawal, learned counsel for the writ petitioner as well as Sri Dhananjay Awasthi for respondents no. 2 and 3. Notice on behalf of the respondent no. 1 has been accepted by ASGI.
3. A joint statement has been made by rival parties that they do not propose to file any affidavit and the writ petition be decided on the basis of the documents available on record. With the consent of the parties, the writ petition is being decided at the fresh stage.
4. The case of the writ petitioner is that the writ petitioner, M/s Excel Vehicles (A Unit of My Auto World Kanpur Private Limited) is registered under the provisions of Goods and Service Tax Act and is a registered dealer for the sale and purchase and after sale service of Tata Brand Motor Vehicle and is also owning Tanisq Showroom. As per the writ petitioner, an audit inspection stood conducted in the premises of the writ petitioner relatable to the period from July 2017 to March, 2023. Basically, the objections related to the late filing of Form GSTR-1 and Form GSTR-3B for various periods, payment of rent through unregistered entity and non-discharge of GST under the reverse charge mechanism etc. The writ petitioner realized certain shortcomings and decided to suo motu

deposit the amounts through Form GST DRC-03 to the tune of Rs. 2,49,98,532/-. the writ petitioner with respect to the residue demand, disputed the liability and submitted appropriate reply to the audit party. Thereafter, a show cause notice dated 01.08.2024 came to be issued proposing various demand. In the show cause notice, cognizance of the amount deposited by the writ petitioner in the year 2021, 2023 and 2024 was taken. An allegation was levelled against the writ petitioner that it has not discharged the interest due on the payment deposited it leading to a outstanding interest liability of Rs. 1,43,22,790/-. The writ petitioners tendered a detailed reply to the show cause notice on 10.10.2024, however, on 18.12.2024, the objection so raised by the writ petitioner to the show cause notice was rejected on 18.12.2024.

5. Being aggrieved against the order dated 18.12.2024, the writ petitioners preferred an appeal under Section 107 of the GST Act before the appellate authority namely, Commissioner Appeals (GST) Allahabad. It is also the case of the writ petitioners that in the memo of appeal, the writ petitioners specifically referred to the deposits of Rs. 8,6,52,470/- and Rs. 17,00,000/- made through DRC challan on 21.06.2021 and 22.06.2021 towards the demand of Rs. 2,49,88,532/- raised in order in original and also submitted that the amount of Rs. 2,56,62,470/- which was required to be reconciled and had not been apportioned in the order in original which has to be treated to be a pre-deposited stipulated under Section 107(6) of the Act. Though the appeal so preferred with delay but the same stood condoned. However, on 16.10.2025, the appeal so preferred by the writ petitioner against the order dated 18.12.2024 of the Additional Commissioner, GST and Central Commissionerate, Kanpur came to be rejected on the ground that the writ petitioner had failed to deposit the pre-deposit as prescribed under Section 107(6) of the GST Act.

6. Questioning the said order, the present writ petition has been preferred.

7. Learned Senior Counsel for the writ petitioner has sought to argue that the appellate order cannot be sustained for even a single moment particularly when the writ petitioner in his memo of appeal had already

disclosed and given the specific figures regarding certain amounts which were given more than the pre-deposit, the same have been conveniently overlooked and have not been considered. Submission is that though Section 107(6) itself provides that no appeal shall be filed under-subsection (1) unless the appellant had paid in full, such part of the amount of tax amount interest, file, fee and penalty arising from the impugned order as it is admitted by him and a sum equal to 10% of the remaining amount of tax in dispute arising from the said order but since the writ petitioner has already deposited an amount of Rs. 86,52,470/- and 17,00,000/-, thus, the said amount ought to have been adjusted and treated as a pre-deposit for the purposes of maintainability of the appeal. Reliance has been placed upon the judgment of the Hon'ble Apex Court in **VVF (India Limited) Vs. State of Maharashtra: Civil Appeal No. 7387 of 2021** decided on 03.12.2021 so as to contend that even the pari materia provision as contained under Section 107(6) of the GST Act being Section 26(6A) of the Maharashtra Value Added Tax Act, 2002 came up for consideration wherein any pre-deposit made prior to the assessment was treated to be a pre-deposit for the purposes of filing of an appeal. Strength has also been drawn from the circular of the Central Board of Indirect Taxes and Customs dated 11.07.2004. Thus, it is prayed that the order impugned be set aside and the appeal be treated to be competent and be heard on merits.

8. Sri Dhananjay Awasthi who appears for the respondents No. 2 and 3 has submitted that none of the contentions so raised by the learned Senior Counsel for the writ petitioner has any legs to stand. Submission is that any deposit made prior to filing of an appeal would not be accounted for as a pre-deposit under Section 107(6) of the Act. Submission is that the said amount is relatable to other heads and they cannot be adjusted as a pre-deposit.

9. I have heard the submissions so made across the bar and perused the record.

10. Facts are in issue. It is not in issue that audit on the records of the

petitioner establishment for July, 2017 to March, 2023 took place and the writ petitioner on realization made certain deposits suo motu through Form GST DRC-03. A show cause notice also came to be issued on 01.08.2024 which was replied on 10.10.2024. The writ petitioner in the memo of appeal had disclosed deposit of Rs. 86,52,470/- and Rs. 17,00,000/- through DRC challan dated 21/22.06.2021 towards demand of Rs. 2,49,88,532/- raised in order in original and submitted that the amount is required to be reconciled and be apportioned in the order in original treated to be pre-deposit under Section 107(6) of the Act. However, record reveals that the said claim of the writ petitioner regarding deposition of the pre-deposit as required under Section 107(6) of the Act was negated while dismissing the appeal. Section 107(6) of the Central Goods and Service Tax Act, 2017 reads as under.-

"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,] [Inserted by Act No. 31 of 2018, dated 29.8.2018.] in relation to which the appeal has been filed."

11. A plain reading of Section 107(6) of the Act would go to show that no appeal shall be filed under-sub section (1) unless the appellant had paid in full any part of the amount of tax, interest, file, fee and penalty arising from the impugned order as is submitted to him and a sum equal to 10% of the remaining of tax in dispute arising from the said order in relation to which the appeal has been preferred.

12. The bone of contention between the parties is whether the said deposit made by the writ petitioner suo motu on its own can be treated to be pre-deposit or not. In order to examine the said issue, what are the provisions in Maharashtra Value Added Tax Act, 2002. Section 26(6A) of the MVAT Act reads as under.-

"(6A) No appeal against an order, passed on or after the commencement of the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017 (Mah XXXI of

2017), shall be filed before the appellate authority in first appeal, unless it is accompanied by the proof of payment of an aggregate of the following amounts, as applicable."

13. A conjoint reading of Section 107(6) of the Act read with Section 26(6A) of the Maharashtra Value Added Tax Act, 2002 would reveal that the provisions are suffered *pari materia* to the same. The provisions contained under Section 26(6A) of the Maharashtra Value Added Tax Act, 2002 came up for consideration wherein the issue akin to what is before this Court came to be considered wherein, it was held as under.-

"11. While analyzing the rival submissions, it is necessary to note, at the outset, that, under the provisions of Section 26(6A), the aggregate of the amounts stipulated in the sub-clauses of the provision has to be deposited and proof of payment is required to be produced together with the filing of the appeal. Both clauses (b) and (c) employ the expression "an amount equal to ten per cent of the amount of tax disputed by the appellant". The entirety of the undisputed amount has to be deposited and 10 per cent of the disputed amount of tax is required to be deposited by the appellant. In the present case, the appellant disputes the entirety of the tax demand. Consequently, on the plain language of the statute, 10 per cent of the entire disputed tax liability would have to be deposited in pursuance of Section 26(6A). The amount which has been deposited by the appellant anterior to the order of assessment cannot be excluded from consideration, in the absence of statutory language to that effect. A taxing statute must be construed strictly and literally. There is no room for intendment."

14. A bare look of the above quoted judgment would reveal that the Hon'ble Apx Court had clearly propounded the law that on plain reading of the language of the statute, 10% of the entire disputed tax liability have to be deposited in pursuance of the charging section and the amount which has been deposited by the appellant therein and period to be order of assessment cannot be excluded from the consideration in absence of statutory language to that effect. Furthermore, the circular of the Central Board of Indirect Taxes and Custom dated 11.07.2004 also throws light upon the said issue. Clause 7.2 reads as under.-

"7.2 Accordingly, in cases where the concerned taxpayer has paid an amount that was intended to have been paid towards a particular demand through FORM GST DRC-

03, has submitted an application in FORM GST DRC-03A on the common portal, the amount so paid and intimated through the FORM GST DRC-03 will be considered as if the payment was made towards the said demand on the date of such intimation through FORM GST DRC-03. The amount so paid shall also be liable to be adjusted towards the amount required to be paid as pre-deposit under Section 107 and Section 112 of the CGST Act, if and when the taxpayer files an appeal against the said demand, before the appellate authority or the appellate tribunal, as mentioned in para 4 above, and the remaining amount of confirmed demand as per the order of the adjudicating authority or the appellate authority, as the case may be, will stand stayed as per provisions of sub-section (6) of section 107 and sub-section (9) of section 112 of CGST Act. However, if the taxpayer does not file appeal within the timelines prescribed in Section 107 and Section 112 of the CGST Act, as the case may be, read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019, the remaining amount of the demand will be recovered as per the provisions of law."

15. The extracted portion of the circular, clause 7.2 itself makes it clear that the amount so paid shall also be liable to be adjusted towards amount referred to be paid as pre-deposit under Section 107 read with Section 112 of the CGST. Even otherwise the Court finds that there are no reasons assigned in coming to the conclusion that on what basis the amount so deposited before assessment has not been considered as a pre-deposit. The order in question is completely silent and by one stroke of pen, the amount already deposited has been said to be not applicable and treated as pre-deposit.

16. In any view of the matter, something more was required to be done at the end of the appellate authority.

17. At this stage, Sri Rahul Agrawal, learned Senior Counsel submits that already sufficient amount has been deposited prior to the assessment which came be apportioned towards the pre-deposit, thus, the appeal be directed to be decided within the time bound period on merits.

18. To such a submission, Sri Awasthi has no objection according to him, the appeal shall be decided within a period of three months without taking any objection with regard to pre-deposit.

19. Accordingly, the writ petition is being decided in the following terms.-

(a) the order dated 16.10.2025 passed by Commissioner (Appeal), Central Goods and Service Tax, Allahabad is set aside; (b) the matter stands remitted back to the authority to decide the appeal on merits within a period of three months without insisting from any pre-deposit under Section 107(6) of the GST Act.

20. With the aforesaid observation, the writ petition stands **disposed of**.

21. Since the writ petitioner is represented through its counsel and the department which is also represented through its counsel then it would be presumed that they have full knowledge about the order passed today and Sri Rahul Agrawal and learned Senior Counsel has made a statement as per the instructions from the writ petitioners who are appellants before the respondent no. 2 would not take any adjournments.

(Vikas Budhwar,J.)

January 20, 2026

Rajesh