

**SUMMARY OF IMPORTANT JUDICIAL PRONOUNCEMENTS
FROM THE CHAMBERS OF ADVOCATE ANKIT KANODIA**

REFERENCE NO- SKKA/105/2022

BASIC INFORMATION

IN THE MATTER OF	M/s APPARIO RETAIL PVT LTD
NAME OF Authority	IN THE HIGH COURT OF TELANGANA
Petition/Appeal No.	Writ Petition No.12183 of 2021
Link to	2021-TIOL-2142-HC-TELANGANA-GST
Date of Order	September 28, 2021
Relevant Section/Rule	Sec- 2(43), 2(84), 2(94), 49(1), 52, 54 of CGST Act, 2017

FACTS IN BRIEF

The petitioner is engaged in the business of trading of electronic goods over e-commerce platform, the petitioner procures electronic goods from various vendors based on forecasted demand of business and maintains huge inventory for the purpose of ensuring timely deliveries; that on receiving orders through ECO the sale is affected through ECO and goods are dispatched to customers and the consideration is received by the ECO from the customers and is remitted to the petitioner after retaining a percentage of amount from and out of such consideration received and deposits such amount with the Government in terms of Section 52 of the CGST Act as 'TCS' and such amount is allowed to be claimed as credit by the petitioner in the electronic cash ledger of the petitioner. Due to excess balance of ITC in its electronic credit ledger, which is utilized for discharge of GST liability hence TCS reflected in petitioner's electronic cash ledger remains unutilized. This Writ Petition is filed primarily assailing the Order-in- Appeal dt.29.12.2020, passed by the 4th respondent, whereby the said respondent had set aside the order passed by the 5th respondent in Appeal dt.24.06.2020, denying the refund of excess amount lying to the credit of electronic cash ledger of the petitioner maintained.

JUDGEMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court while disposing off the writ petition held as:
 -A reading of Section 49(1) of the CGST Act would indicate that it is not only the person in whose name the electronic cash ledger is maintained, but also other person can make deposits into the electronic cash ledger. This would be evident from the language used in Section 49(1), as while allowing deposit, reference is made to 'by a person', and while giving credit to the electronic cash ledger, the word used is 'such person'. Alternatively, the Section would have used the terms like 'a registered person' or 'a taxable person' as defined under the CGST Act. **Bench cannot lose sight of the fact that the collection so permitted under Section 52 is specified in Chapter X dealing with 'Payment of Tax' and the heading of Section 52 also deals with 'Collection of tax at source'.**
 -If the contention of the respondents that the said amount collected under Section 52 is not a 'tax', then such collection would have to be treated as without authority of law, if the same does not partake the character of 'tax', which is only permitted to be levied and collected by the charging Section i.e. Section 9 of the CGST Act.
 - Therefore, the petitioner is entitled to claim refund of the balance in electronic cash ledger under proviso to sub-section (1) of Section 54 of the CGST Act.

OUR COMMENTS

Once it is held that the amount collected by ECO and paid to the Government under Section 52(3) of the CGST Act, is tax, to which the supplier is entitled to take credit in his electronic cash ledger under sub-section (7) of Section 52, the provisions of Section 54 of CGST Act would apply for claiming refund of the same. Assessee could not be compelled to wait for eternity to agitate its claim seeking refund under the provisions of GST of the amount to which it was entitled to under the statute, merely because of existence of (non functional) alternate forum/remedy on paper, by not invoking the jurisdiction under Article 226 of the Constitution of India when right to carry on business is being impeded, resulting in violation of fundamental right as guaranteed under Article 19(1)(g) of the Constitution of India.