

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No.1071/2023

M/S Batra Brothers Pvt. Ltd.

..... Petitioner(s)

Through: Mr. Subodh Singh Jamwal, Advocate with
Mr. Ashish Nanda, Advocate.

Vs

Union Territory of Ladakh and another

..... Respondent(s)

Through: Mr. Vishal Sharma, DSGI

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

ORDER

15.09.2023

- 01.** The petitioner has called in question order No.SAA/UTL/2022-23/06 dated 01.12.2022 passed by the respondent No.2 in the appeal No.ARN AD380722000012S dated 30.07.2022 whereby the appeal filed by the petitioner has been dismissed for non-payment of 25% pre-deposit of the penalty as mandated under proviso (1) to sub-Section (6) of Section 107 of CGST Act 2017, read with Section 21 of the UTGST Act, 2017.
- 02.** On being put on notice Mr. Vishal Sharma, learned DSGI appearing for the respondents has filed objections. The payment of 25% of the penalty amount by the appellant is not denied, however, it is submitted that the petitioner has deposited the amount in electronic cash ledger and, therefore, cannot be construed to be the payment of 25% pre-deposit as mandated by proviso (1) to sub-Section (6) of Section 107 of CGST Act, 2017, read with Section 21 of UTGST Act, 2017.

03. We have considered the rival contentions and are of the view that the objections taken by the respondent is technical in nature. The mandate of proviso (1) to sub-Section (6) of Section 107 of CGST Act, 2017 and Section 21 of UTGST Act, 2017 is clear and unequivocal and makes the appeal maintainable only if the person filing appeal makes a pre-deposit to the tune of Rs.25% of the penalty with the respondents. It is true that the petitioner herein has instead of depositing the said pre-deposit amount with the respondents has deposited the same in the electronic cash ledger.
04. From reading of Section 49(3) of CGST Act, 2017 it is evident that the amount available in the electronic cash ledger can be used by the petitioner for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made there-under in such manner and subject to such conditions and within such time as may be prescribed.
05. Since, the requisite amount is already deposited in the electronic cash ledger by the petitioner it would be appropriate and in the interest of justice to permit the respondents to take out and utilize the amount of pre-deposit in the manner, the pre-deposit is utilized. The petitioner, if required, shall facilitate the utilization of the aforesaid amount for the purposes of appropriating it towards the pre-deposit.
06. On doing so, the appeal shall be taken up for consideration on merits.
07. The petition is **disposed of**.

Jammu
15.09.2023
Shammi

(Puneet Gupta)
Judge

(Sanjeev Kumar)
Judge