

## Can GST Amount credited in Cash Ledger be considered as cash payment or not? Commissioner shall follow High Court directions or appeal against but cannot act in contempt

---

**By: Vivek Jalan**

**Partner – Tax Connect Advisory Services LLP**



---

Many cases are pending wherein, during the initial years of GST, the taxpayers had issues and technical problems and the GST Authorities also did not have a solution. The cases include few like the following –

- A. GSTR 3B return filed without showing an amount as payable in a month and the taxpayers were not guided that Form DRC-03 could be used to pay such an amount. Thus, they paid the same vide next GSTR-3B. Important to note also is that Circular 26/26/2017 in this respect also was issued after quite some time into the GST regime.
- B. Taxpayers were automatically migrated, and they could not file returns.
- C. Taxpayers clicked the “save” button and not “submit” button while filing GSTR-3B and the same was considered as filed.

In all these cases the taxpayers kept a balance in their GST Cash Ledgers as a prudent measure, but the GST Authorities have raised demands for interest as they have not considered the payments in GST Cash Ledger as a valid tax payment. These cases are being contested in different forums.

In one such case, the matter was remanded to the Commissioner to pass orders after hearing but the same was referred to the AC. AC is not Commissioner as was held by The Hon'ble Telangana High Court in the case of BHUMANA RAMACHANDRA REDDY Vs UNION OF INDIA [2023-VIL-709-TEL]. When a High Court specifically directs a commissioner to pass orders, then he cannot delegate to the AC. In case it is done, then the ACs Order will be invalid. This is irrespective of Circular No.3/3/2017-GST, dated 05.07.2017 considering AC as a proper officer under CGST Act, 2017, as section 2(24) of CGST Act, 2017 mentions that the 'Commissioner' means the Commissioner of Central Tax and includes the Pr. Commissioner of Central Tax and the Commissioner of Integrated Tax, hence, Assistant Commissioner is not a Commissioner. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesses and chaos in administration of tax laws.

Now the ball is in The Commissioner's court who has to pass an order in this regard. This case might possibly could be the beginning of the end of such cases. The GST law Committee may also consider this issue and issue suitable clarifications for better clarity.

**BRIEF ABOUT THE AUTHOR:**

Vivek Jalan is a Chartered Accountant & a qualified L. LM & LL.B. He is the Founder & Partner of Tax Connect Advisory Services LLP. He is the Chairman of The Indirect Tax Core Group of The Confederation of Indian Industries – Economic Affairs and Taxation Committee (ER). He is the Chairman of The Fiscal Affairs and Taxation Committee of The Bengal Chamber of Commerce and Industry. He is the Member of The Managing Committee of The Bengal Chamber of Commerce and Industry.

He is a regular Columnist and guest expert in Economic Times, Business Standard, Times of India, Dalal Street Journal, Money Control, Live mint, CNBC, Hindustan Times, Zee Business, Financial Express, other dailies and business magazines like Business Today, etc. He is also a guest expert on Taxation matters in All India Radio and other media platforms. He is the Editor of Weekly Bulletin TAX CONNECT, a publication on Direct and Indirect Taxes which reaches more than 70000 professionals.

He is also a visiting faculty in The Confederation of Indian Industries (CII), The Institute of Chartered Accountants of India, Institute of Cost Accountants of India, Indian Institute of Foreign Trade, The Bengal Chamber of Commerce and Industry, The Indian Chamber of Commerce, The Merchant Chamber of Commerce and other Business Forums. He has also delivered Lectures at various Government Taxation Forums including the CGST & SGST Departments across the country.

He has worked as a Finance Manager in ITC Ltd. and Chief Compliance Officer with IntraSoft Technologies Ltd. He has more than 18 years of experience in the field of Information Technology, Finance, Taxation and Logistics. He was also an All-India Rank holder in CA Final Examination conducted by the Institute of Chartered Accountants of India.

His Books include the following –

- COMMENTARY ON UNION BUDGET 2023 – February 2023
- HOW TO HANDLE GST LITIGATION– September 2022
- HANDBOOK ON GST– June 2022
- GST PLEADING & PRACTISE – August 2021 – **India's Bestseller**
- UNION BUDGET 2021 – February 2021
- SECTIONWISE COMPENDIUM ON GST – October 2020
- INTEGRATED APPROACH TO E-INVOICING E-WAYBILL & RETURN FILING – October 2020
- COMMENTARY ON UNION BUDGET 2020– Feb 2020
- COMMENTARY ON UNION BUDGET 2019 – July 2019
- WITHDRAWAL OF LEGAL TENDER 2016
- COMMENTARY ON UNION BUDGET 2017
- SECTION-WISE COMPENDIUM ON GST – Oct 2020
- INTEGRATED APPROACH TO GST E-INVOICE, E-WAYBILL & RETURN E-FILING – Oct 2020
- **SECTION-WISE COMMENTARY ON GST – SEPTEMBER 2018**
- HOW TO HANDLE GST-TDS, GST-TCS, GST AUDIT & GST ANNUAL RETURN – NOVEMBER 2018
- A COMPENDIUM ON GST W.E.F. 1ST JULY 2017
- GST MODEL LAW (NOVEMBER 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- GST MODEL LAW (JUNE 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- "SERVICE TAX AND VAT IN WORKS CONTRACT: A COMPREHENSIVE TECHNICAL GUIDE".

He is a regular speaker at various professional forums on the various key areas in Finance and has delivered more than 300 lectures on various topics under Information Technology, Finance, GST, Customs, Foreign Trade Policy of India, Income Tax, etc.