GSTAT

State Bench Chandigarh

Court No. Court I

APL/28/CHD/2026

DELTRON (A DIVISION OF CONTINENTAL DEVICE INDIA PRIVATE LIMITED **.....Appellant**

Versus

COMMISSIONER CENTRAL GOODS AND SERVICE TAX LUDHIANA , COMMISSIONER , LUDHIANA & ORS. **.....Respondent**

Quorum

Hon'ble Jatinder Pal Singh, Member(Judicial)
Hon'ble Pradeep Kumar Goel, Member (Technical)

Counsel for Appellant
SHRI VIKRANT KACKRIA, ADVOCATE, AND SH. AKHIL PRATAP SINGH, ADVOCATE

Counsel for Respondent
SH. VEER SINGH MEENA, AR

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : ZA030281026000290H **Date of order :** 16/10/2026

1.	GSTIN/Temporary ID/UIN - 03AAACC1835E2ZC	
2.	Appeal Case Reference no. - APL/28/CHD/2026	Date - 16/04/2026
3.	Name of the appellant - DELTRON (A DIVISION OF CONTINENTAL DEVICE INDIA PRIVATE LIMITED , Parveen.Nijhawan@rediffmail.com , 8872333779	
4.	Name of the respondant - 1. Commissioner Central Goods and Service Tax Ludhiana 2. Anurag Bharti Assistant Commissioner of StateTaxes (Jalandhar-1) , aetcjal1@punjab.gov.in , 9872910024	
5.	Order appealed against - AD030224007982F	
	(5.1) Order Type - Demand Order	

	(5.2) Ref Number - ZD0312250352314	Date - 19/12/2025
6.	Personal Hearing - 16/10/2026 17/09/2026 01/09/2026	
7.	Status of Order under Appeal - Modified – Order under Appeal is modified	
8.	Order in brief - Accordingly, we allow the appeal partially by holding that credit of Rs. 2,90,845/- is admissible to the Appellant. As regards the transitional credit amounting to Rs. 6,99,004/-, we hold that the same cannot be allowed under Section 140 of the CGST Act. The appeal is rejected as far as this latter amount of Rs. 6,99,004/- is concerned. The liability of interest will be calculated accordingly and penalty amount will also be reduced to Rs. 69,900/- calculated at the rate of ten percent of the amount disallowed.	

Summary of Order

9.	If demand order then whether demand quantified: No

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Short or non-payment of tax	The Appellate Authority has held that the transitional credit has wrongly been availed and held that the same is recoverable along with interest and penalty.	

Place :CHANDIGARH

Signature

Date : 16.10.2026

CHANDIGARH Jatinder Pal Singh

Designation : Member

Jurisdiction :Chandigarh

ORDER

FINAL ORDER

In the present case, the appeal has been filed by M/s Deltron (a division of Continental Device India Pvt. Ltd.), A-47, Industrial Area, Phase 8-B, Sector 90, SAS Nagar, Mohali (hereinafter referred to as "the Appellant") against Order-in-Appeal No. LUD-GST-001-APP-450/2025 dated 14.10.2025 (hereinafter referred to as the "Impugned Order") passed by the Joint Commissioner (Appeals) Ludhiana (the Appellate Authority). The CGST Department is the Respondent herein.

2. The brief facts of the case are that the Appellant is engaged in the manufacture of taxable goods and was registered with the Central Excise Department having registration No. 03AAACC1835E2ZC under the erstwhile Central Excise regime. After the roll out of GST, the Appellant was registered with the Goods & Service Tax Department having GSTIN No. 03AAACC1835E2ZC with effect from 01.07. 2017. The Appellant had taken transitional credit amounting to Rs. 9,89,849/- in Form TRAN-1 filed by them under Section 140 of the CGST Act, 2017 (hereinafter referred to as "the CGST Act" or "the Act"). The credit was taken on two accounts. Credit of Rs. 2,90,845/- of CVD and additional duty of excise paid on capital goods imported vide Bill of Entry No. 2254366 dated 27.06.2017, and received in the factory of the Appellant on 08.07.2017, was taken through Table 6(a) of Form TRAN-1. Another credit of Rs. 6,99,004/- was taken through Table 7(a) of Form TRAN-1 for the Central Excise duty paid on goods which were dispatched for export vide invoice Nos. 8VE0011, 8VE0012 and 8VE0013 dated 29.06.2017 after payment of Central Excise duty under claim for rebate, and on which the Appellant had to again pay IGST (in lieu of Central Excise duty) at the time of export after 01.07.2017.

3. A show-cause-cum-demand notice was issued by the Superintendent, CGST Range III, CGST Division-I, Mohali seeking to disallow the credit of Rs. 9,89,849/- under Section 73 of the Act along with demand of interest under Section 50 read with Section 142 (8)(a) of the Act, and proposing to impose penalty under Section 73(9) and Section 122(2) of the Act. The show cause notice was decided vide Order-in-Original dated 26.12.2023, vide which the original adjudicating authority confirmed the demand of inadmissible transitional credit of Rs. 9,89,849/- along with interest and imposed penalty of Rs. 98,985/-. The Appellant filed an appeal before the Appellate Authority. Vide the Impugned Order, the Joint Commissioner (Appeals) disallowed the appeal filed by the Appellant. The Appellant has now filed the present appeal against the Impugned Order before this Tribunal.

4. In the Grounds of Appeal filed by the Appellant, the Appellant has claimed that they should be allowed Transitional Credit under Section 140 of the Act in both cases, for the following reasons:

(i) The authorities below ought to have considered the plea of the Appellant that the very purpose of introducing Section 140 of the CGST Act was to ensure that there is no loss to the assessee in respect of the credit available to them under the erstwhile Central Excise/ VAT/ Service Tax regime. The very purpose of introduction of the said provision was that if the taxes have been paid in the earlier regime then the same are not to be subjected to double taxation under the GST regime. The authorities below ought to have kept this very aspect in their mind while deciding the issue in hand, because there is no dispute regarding the fact that Input Tax Credit was taken in respect of the capital goods received by them after 01.07.2017 which were duly tax paid. Further the tax of Rs. 6,99,004/- was the tax twice over on the same goods, once under the Central Excise Act, 1944 and then under the CGST Act 2017. It cannot be the intention of the legislature to charge tax twice over on the same goods. Thus, there was no reason to disallow the transitional credit if the intention of the legislature for introduction of Section 140 of the CGST Act is taken into account.

(ii) The Adjudicating Authority ought to have considered the plea of the Appellant that they were entitled to transitional credit of Rs. 2,90,845/- as per the provisions of Section 140(2) of the CGST Act. The said section clearly provides that the assessee would be entitled to take in his Electronic Credit Ledger the credit of unavailed CENVAT credit in respect of capital goods not carried forward in a return furnished under the existing laws by him. Thus the only condition for availment of unavailed CENVAT credit in respect of capital goods was that the assessee should not have carried forwarded the said credit in his return under the erstwhile law. It is the admitted position in the Impugned Order that the capital goods were received by the Appellant after the appointed date and no Input Tax Credit of the said capital goods was carried forward in the earlier returns filed by them. Since the said credit was neither

availed nor the receipt of the capital goods is disputed in the orders below, the Appellants fulfilled the condition of Section 140(2) of the CGST Act, 2017 and hence the Input Tax Credit of the said amount could not have been disallowed to the Appellant. There was no reason for the authorities below in deciding the credit under dispute as per the provisions of Section 140(5) of the Act when the present situation was securely covered by the provisions of Section 140(2) of the CGST Act, 2017. Thus, when the receipt of the goods and their duty paid nature is not in dispute, the credit of such tax could not have been disallowed to the Appellant.

(iii) The Adjudicating Authority has erred in disallowing the transitional credit of Rs. 6,99,004/- in respect of the goods which were cleared for export on which Central Excise duty was paid and subsequently on reaching the port IGST was levied by the department. It can nowhere be the intention of the legislature to tax the same goods twice over, once under the Central Excise Act and then under the CGST Act. For this reason Section 174 of the CGST Act was incorporated wherein Section 174(2) clearly provides that repeal of the earlier Act would not affect any right, privilege, obligation or liability acquired under the amended Act or repealed Act. The said provision clearly provides that the right accrued to the assessee cannot be taken away in case of repealing of the earlier Act. The department is nowhere disputing either in the Order-in-Original or in the Order-in-Appeal that the said goods cleared vide the three above-mentioned invoices had suffered duty twice over, once under the Central Excise Act and then again under the CGST Act. When this fact is nowhere disputed by the department, the transitional credit cannot be denied as it would tantamount to taxation of the same goods twice over by the department, which was not the intention of the legislature while introducing the CGST Act. It may be pertinent to cite the decision of the Hon'ble Tribunal in the case of *M/s Circor Flow Technologies India Pvt. Ltd. Vs. Pr. Commissioner of GST, Coimbatore 2022(59) GSTL 63 (Tri. Chennai)* wherein it has been clearly held that as per provisions of Section 174(2) of the CGST Act any right, privilege, obligation acquired under the repealed Acts cannot be affected. The said issue is squarely covered also by the decision of the Hon'ble Punjab & Haryana High Court in the case of *M/s Adfert Technologies Pvt. Ltd. Vs. Union of India* reported as *2020 (32) GSTL 726 (P&H)* , wherein it has been held that the transitional credit is a vested right, which cannot be taken away on procedural or technical grounds. The said decision of the Hon'ble High Court has been upheld by the Hon'ble Supreme Court and is reported as *2020(34) GSTL J 138 (SC)* . Further, it is pertinent to cite the decision of the Hon'ble Madras High Court in the case of *M/s Tara Express Vs. Union of India reported as 2019 (20) GSTL 321 (Madras)* wherein it has been held that GST laws contemplate seamless flow of tax credit and thus the credit cannot be denied on procedural/technical lapses. Thus, there was no reason to hold that the credit has wrongly been carried forward in the transitional returns and there was no reason for the recovery of the same. In view of the above, the credit cannot be disallowed on

this reason.

(iv) When the demand of tax is not sustainable, there is no reason to demand interest and impose any penalty, as held in the following cases:

- *LML Ltd. V/s CCE, New Delhi 2001 (130) ELT 480 (Tri).*
- *Pre-stressed Udyog (Assam) Pvt. Ltd. V/s Commissioner of Central Excise Shillong 1999 (111) ELT 88 (Tri).*
- *Sulara Chemicals Pvt. Ltd. V/s Commissioner of C.E. Bolpur 2002 (145) ELT 230 (Tri).*

(v) Interest should not have been demanded as the Appellant always had surplus funds in their Credit Ledger Account, from the date of availment of transitional credit, till date.

(vi) There is no reason for imposition of any penalty as the Appellant had not suppressed any facts from the Department and credit was duly reflected in TRAN-1 Return filed by them.

5. We have heard Shri Vikram Kackria, Ld. Advocate for the Appellant, who has made detailed arguments in support of the Appellant's case. We have also heard Shri Veer Singh Meena, Ld. AR for the Respondent-CGST Department, who has reiterated the findings given in the Impugned Order. In rejoinder, Shri Kackria has reiterated that the Impugned Order ought to be set aside and the appeal ought to be upheld.

6. We have considered and deliberated upon the arguments advanced by both sides. We have also perused the documents on record and examined the relevant legal provisions. The issues involved for determination in the present appeal are as under:

(I) Whether the credit of Rs. 2,90,845/- in respect of the amount paid as CVD and additional duty of excise on capital goods, which were imported prior to 01.07.2017 and received in the factory of the Appellant after 01.07.2017, can be allowed to be carried forward to the electronic credit ledger as CENVAT, under Section 140 of the CGST Act?

(II) Whether the credit of Rs. 6,99,004/- of the amount which was paid as Central Excise duty on goods dispatched for export on 29.06.2017 and which was not required to be paid under the GST law, can be taken as transitional credit in Form TRAN-1 under Section 140 of CGST Act?

(III) Whether interest is payable under Section 50 read with Section 148(2)(a) of the CGST Act, if the credit is not held to be admissible?

(IV) Whether penalty imposed under Section 73(9) and 122(2) of the Act is sustainable, if the credit is not held to be admissible?

7. Section 140 of the CGST Act falls under Chapter XX of ibid., which provides for transitional provisions. This Chapter contains provisions which were felt necessary to be incorporated for the purpose of transition from the erstwhile tax laws relating to Central Excise, VAT, Services Tax etc. (also referred as 'existing laws') which were subsumed into the GST which came into effect from 1.7.2017. Section 140 provides for transitional arrangements for input tax credit under which CENVAT available under the existing laws was allowed to be carried forward as ITC under the GST law.

8. The procedure for availing transitional credit under Section 140 of the CGST Act has been laid down in Rule 117(1) of the CGST Rules, 2017, which requires the relevant information to be furnished to the Department in Form TRAN-1. Form TRAN-1 has various tables for availing credit under different sub-sections of Section 140.

9. In the present case, the Appellant has taken transitional credit on two counts: (i) credit of duty paid on capital goods; and (ii) credit of Central Excise duty paid on goods exported. For the first count, credit has been taken after giving relevant information under Table 6(a) of Form TRAN-1, and for the second count credit has been taken by giving information under Table 7(a) of Form TRAN-1.

10. It is observed that Table 6 is for providing details of capital goods for which unavailed credit has not been carried forward under existing law [Section 140(2)]. Part (a) of the Table provides for giving details of amount of unavailed credit in respect of capital goods. Table 7 is for submitting details of the inputs held in stock in terms of Section 140(3), 140(4)(b), 140(5) and 140(6). Part (a) of this table requires details of the amount of duties and taxes on inputs claimed as credit excluding the credit claimed under Table 5(a).

11. On going through sub-section (2) of Section 140, it is observed that the said sub-section allows credit of the amount of unavailed credit in respect of capital goods not carried forward in the return furnished for the period ending 30.06.2017 under the existing law. The Explanation to sub-section (2) further provides that the expression "unavailed CENVAT credit" means the amount of credit that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled. Further, clause (a) of sub-rule (2) of Rule 117 of the CGST Rules specifically provides as under:

"(2) Every declaration under sub-rule (1) shall-

(a) in the case of a claim under sub-section (2) of section 140, specify separately the following particulars in respect of every item of capital goods as on the appointed day-

(i) the amount of tax or duty availed or utilised by way of input tax credit under each of the existing laws till the appointed day; and

(ii) the amount of tax or duty yet to be availed or utilised by way of input tax credit under each of the existing laws till the appointed day."

12. It is also relevant to mention that under the existing law, i.e. Central Excise law, CENVAT credit was allowed on capital goods in two parts: while fifty per cent of total credit was allowed to be taken in the year in which the capital goods were received, credit of the remaining fifty per cent was allowed in subsequent year(s).

13. We also find that the issue under consideration has also been clarified in the FAQs on GST (3rd Edition dated 15.12.2018) issued by the Central Board of Indirect Taxes and Customs ("CBIC"), in reply to Q3 under Chapter 24 relating to Transitional Provisions (page 543) as follows:

"Q 3. A registered person, say, purchases capital goods under the existing law (Central Excise) in the June quarter of 2017-18. Though the invoice has been received within 30th June but the capital goods are received on 5th July, 2017 (i.e. in GST regime). Will such a person get full credit of CENVAT in GST regime?

Ans. Yes, he will be entitled to credit in 2017-18 provided such a credit was admissible as CENVAT credit in the existing law and is also admissible as credit in CGST - section 140(2) of the CGST Act."

14. We further find that the CBIC has issued Circular No. 182/14/2022 dated 10.11.2022 clarifying various issues consequent to opening of the GSTN portal for availing credit under TRAN-1/TRAN-2, as per the directions of the Hon'ble Supreme Court. As per para 5.3.4 of this Circular, verification of transitional credit claimed through TRAN-1 and TRAN-2 was to be undertaken by the Department as per the guidelines detailed in Annexure I to the Circular. The said Annexure I, titled as "Guidance Note for verification of CGST Transitional Credit claimed by the Applicant in TRAN-1/TRAN-2" gives an "indicative list of nature of credit" under various provisions of the Act. In respect of transitional credit taken under sub-section (2) of Section 140 through Column 11 of Table 6(a), Sl. No. 2 of the Annexure states as under:

"This table captures details of unavailed credit of capital goods in the pre-GST era. Capital Goods credit was allowed to be availed in two installments of 50% each. This table is meant to be used by the taxpayers who have availed a portion of CENVAT credit on capital goods through ER or ST return and now intend to avail remaining credit in respect of capital goods which has not been availed through the ER or ST return. The said amount of credit should have been admissible as input tax credit under GST law as well as under existing law."

15. We also note that in the Guidance Note it is advised that the full text of law be referred to for better understanding of the issue.

16. On perusal of the provisions of sub-section (2) of Section 140, it is evident that transitional credit of unavailed CENVAT credit on capital goods is allowed under this sub-section subject to certain conditions, namely, that the registered person should not be opting to pay tax under section 10; that credit of the unavailed CENVAT credit in respect of capital goods should not have been carried forward in a return furnished under the existing law; and that credit should be admissible as CENVAT credit under the existing law as also as ITC under the GST law.

17. As noted above, the Explanation to the said sub-section further clarifies that: *"Explanation.- For the purposes of this sub-section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law, from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law."*

18. It is thus evident that while sub-section (2) of Section 140 of the Act admittedly covers cases where capital goods were already received and CENVAT credit was availed in part under the existing law (i.e. the Central Excise Act) and the balance credit was yet to be taken, this sub-section does not create any bar for availing unavailed CENVAT credit on capital goods which were received after the GST Act came into force (that is after 01.07.2017) and on which the duty paid was admissible as CENVAT under the existing law as well as ITC under GST law. Clause (a) of sub-rule 117(2) of the CGST Rules which provides for furnishing information regarding credit availed or utilized and yet to be availed or utilized under the existing law also does not provide that credit availed or utilised cannot be nil.

19. We thus find that as per sub-section 140(2) of the CGST Act, a registered person is entitled to take credit in respect of capital goods that was not carried forward in a return filed under the existing law. The sub-section has used the words "credit of un-availed CENVAT credit in respect of capital goods, not carried forward in a return". That means credit that was not carried forward in the Central Excise return (ER-1) can be transitioned through TRAN-1. The Section does not specify that only 50% credit can be transitioned through TRAN-1. Therefore, credit on capital goods that was not carried forward in a Central Excise return can be transitioned to electronic credit ledger through TRAN-1, whether it is 50% or 100% of the total quantum of credit. The Appellant has fulfilled all conditions for taking transitional credit under Section 140, as well as filed necessary information in prescribed Form TRAN-1. Accordingly, we find no reason to disallow credit in respect of capital goods availed by the Appellant under sub-section 140(2) of the CGST Act. We hold that the said credit has to be allowed.

20. As regards the credit of Rs. 6,99,004/- taken in respect of goods cleared for export on payment of Central Excise Duty, the Appellant has taken credit under Table 7(a) which covers various sub-sections of Section 140 as mentioned above. It is observed that Table 7 is applicable if transitional credit is taken on inputs, which is not the case of the Appellant. It is also observed that there is no provision under Section 140 for taking credit of Central Excise duty paid on goods cleared for export before 01.07.2017 but which were actually exported after introduction of GST with effect from 01.07.2017. The Appellant could perhaps have

claimed refund of the Central Excise duty so paid, but cannot use Section 140 as a residuary provision to avail credit in a case where it is not admissible as per law. The Legislature in its wisdom has provided for specific situations under which credit of taxes and duties paid under the erstwhile laws is allowed to be transitioned as ITC under Section 140 of the CGST Act. If no provision exists for allowing credit in a particular situation, credit cannot be allowed in such cases.

21. The Appellant has taken a plea that recovery of credit wrongly taken could have been made only under the existing laws and not under the CGST Act. We do not find any merit in this contention in as much as the credit was alleged to have been incorrectly taken under CGST law i.e. under section 140 of the CGST Act. Hence, the provisions of GST law would be applicable for recovery of the said credit, in the present case.

22. The Appellant has also taken a plea that as per sub-section 174(2) of the Act, the right accrued to the assessee cannot be taken away due to the repeal of existing laws. It has also been argued that transitional credit is a vested right which cannot be taken away on procedural or technical grounds. Reference has been made to certain judicial precedents in support of the contention that the Appellant's right under the existing laws cannot be affected and credit should be allowed to them as GST contemplates seamless flow of tax credit. In this regard, we observe that no right had accrued to the Appellant under the existing law as far as the transitional credit is concerned. The right to take credit accrued to the assessee only after GST came into effect and ITC as well as transitional credit was admissible only under and in accordance with the provisions of GST law.

23. The case of *M/s Adfert Technologies Pvt. Ltd. (supra)* cited by the Appellant relates to the right which had accrued to taxpayers in respect of stock of inputs and capital goods which were lying in stock as on the appointed day i.e. 01.07.2017 and which had already suffered under the erstwhile tax laws, or unutilized CENVAT credit / input tax credit which had accrued to the taxpayers under the Central Excise / VAT laws as on the appointed day. Para 2 of the judgment refers in this regard. The Hon'ble Punjab & Haryana High Court had held in this case that the right of the taxpayer to the transitional credit which had accrued in accordance with the provisions of law could not be affected. As is clear from Para 4 of the judgment, the Hon'ble High Court was dealing with two situations: (i) where taxpayers were not able to file TRAN-1 by the due date; (ii) where taxpayers filed TRAN-1 by the due date, but they wanted to revise the TRAN-1. In the case before us, there is no denial of transitional credit in such situations.

24. The judgment of Hon'ble Madras High Court in the case of *M/s Tara Express (supra)* pertains to a case where the taxpayer was not able to file TRAN-1 due to glitches in the Portal, and is not applicable to the facts of the present case. As regards the CESTAT decision

in *M/s Circor Flow Technologies India Pvt. Ltd. (supra)*, the facts therein involved payment of Service Tax on reverse charge on import of services by the taxpayer, of which they were entitled to credit under the erstwhile laws. The said case is clearly distinguishable on facts, from the present case.

25. As discussed above, there are no provisions under the CGST Act for allowing transitional credit in a case like that of the Appellant. Since the transitional credit was neither due under the relevant provisions relating to transitional credit nor under the provisions relating to availing of ITC under the GST law, no such right can be said to have accrued to the Appellant.

26. In view of the foregoing discussion and analysis, we hold that transitional credit amounting to Rs. 6,99,004/- cannot be allowed under Section 140 of CGST Act for the Central Excise duty paid on goods exported. The provisions of Section 174(2)(c) of CGST Act are of no assistance to the Appellant in this case.

27. As regards the issue relating to the liability to pay interest under Section 50 of the CGST Act, the law is very well settled on this issue that if the amount of tax/ wrongly availed ITC is recoverable from a taxpayer, demand of interest on the same is legally tenable and in order. The decisions of the Hon'ble Supreme Court in *M/s Pratibha Processors Vs. UOI [1996 (88) ELT 12 (SC)* and *M/s Indodan Industries Ltd. Vs. State of U.P. & Others [2009-VIL-11-SC]* are apposite in this regard.

28. Similarly, if the duty amount is determined as payable under section 73 of the CGST Act, penalty equivalent to ten percent of the tax is also payable under sub-section (9) of Section 73 of the Act. The contention of the Appellant that there is no reason for imposition of any penalty as the Appellant had not suppressed any facts from the Department and credit was duly reflected in TRAN-1 Return filed by them, is not tenable. From the provisions of Section 73, it is abundantly clear that the said section is applicable precisely where input tax credit has been wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.

29. Accordingly, we allow the appeal partially by holding that credit of Rs. 2,90,845/- is admissible to the Appellant. As regards the transitional credit amounting to Rs. 6,99,004/-, we hold that the same cannot be allowed under Section 140 of the CGST Act. The appeal is rejected as far as this latter amount of Rs. 6,99,004/- is concerned. The liability of interest will be calculated accordingly and penalty amount will also be reduced to Rs. 69,900/- calculated at the rate of ten percent of the amount disallowed.

30. The appeal is disposed of on the above terms.

(Jatinder Pal Singh)

(Pradeep Kumar Goel)

Dated: 16.10.2026