GSTAT

State Bench Chandigarh

Division Bench Court No. Court I

APL/186/CHD/2026

ASHWANI KUMAR SHARMA **.....Appellant**

Versus

BHAGAT DEEPAK KUMAR, JOINT COMMISSIONER, LUDHIANA CHANDIGARH & ORS. **.....Respondent**

Quorum

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

Counsel for Appellant

SH. HARI BABU KODURI

Counsel for Respondent

SHRI VEER SINGH MEENA, AR ALONG WITH SMT. VAISHALI CHANDHOK AND SMT. BALWINDER KAUR, SUPERINTENDENTS

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 : Yes

Order reference no. : ZN270281026000372H **Date of order :** 28/10/2026

1.	GSTIN/Temporary ID/UIN - 03AAACN5702D1Z6	
2.	Appeal Case Reference no. - APL/186/CHD/2026	Date - 24/03/2026
3.	Name of the appellant - ASHWANI KUMAR SHARMA , haribabu.koduri@jsw.in , 9322904665	
4.	Name of the respondant - 1. CGST Commte Chandigarh , prcommr-chd@gov.in , 9810441570 2. BHAGAT DEEPAK KUMAR	
5.	Order appealed against - AD0312220013507	
	(5.1) Order Type - Demand Order	

	(5.2) Ref Number - ZD031024007797M	Date - 17/10/2024
6.	Personal Hearing - 28/10/2026 13/10/2026 24/09/2026 02/09/2026 12/08/2026 29/07/2026 23/07/2026 16/07/2026 09/07/2026	
7.	Order in brief - In view of the discussion and findings recorded hereinabove, we order that: (i) The Appellant is entitled to avail as transitional credit, the entire credit in respect of the duty paid on the capital goods amounting Rs. 2,13,593/-. (ii) The Appellant will immediately submit all the 81 Invoices in respect of the claim of credit amounting to Rs. 1,54,400/-, before the original authority. The original authority shall verify these invoices and allow the credit, if otherwise in order. The original authority shall complete this exercise expeditiously, and within one month in any case. The appeal is disposed of accordingly.	

Summary of Order

8.	If demand order then whether demand quantified: No

9.	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	Regarding availment of entire credit of Capital Goods through TRAN-1 under Section 140 of the Act without availing any credit of Capital goods in the ER-1 return, the issue has been decided against the appellant vide Annexure-I of the C.B.I.C. Circular No. 182/14/2022-GST dated 10.11.2022 which provides for certain CHECKS FOR VERIFICATION OF ENTRIES IN TRAN-1 TABLE wherein under the head Checks for Table 6(a): it clarifies that If no credit was availed earlier, credit of entire amount cannot be availed through this Table . Various judgements quoted by the appellant in its favour pertain to different facts and are not available in this case which is clearly against the appellant. Accumulated credit has been availed against single invoice. The appellant is not entitled to claim credit more than the amount of duty paid via an invoice.	
Short or non-payment of tax	Regarding availment of entire credit of Capital Goods through TRAN-1 under Section 140 of the Act without availing any credit of Capital goods in the ER-1 return, the issue has been decided against the appellant vide Annexure-I of the C.B.I.C. Circular No. 182/14/2022-GST dated 10.11.2022 which provides for certain CHECKS FOR VERIFICATION OF ENTRIES IN TRAN-1 TABLE wherein under the head Checks for Table 6(a): it clarifies that If no credit was availed earlier, credit of entire amount cannot be availed through this Table . Various judgements quoted by the appellant in its favour pertain to different facts and are not available in this case which is clearly against the appellant. Accumulated credit has been availed against single invoice. The appellant is not entitled to claim credit more than the amount of duty paid via an invoice.	
10.	If remanded with directions:	
	a) Remanded to: Adjudicating Authority	

	b) Directions subject to which remanded, if any: In view of the discussion and findings recorded hereinabove, we order that: (i) The Appellant is entitled to avail as transitional credit, the entire credit in respect of the duty paid on the capital goods amounting Rs. 2,13,593/-. (ii) The Appellant will immediately submit all the 81 Invoices in respect of the claim of credit amounting to Rs. 1,54,400/-, before the original authority. The original authority shall verify these invoices and allow the credit, if otherwise in order. The original authority shall complete this exercise expeditiously, and within one month in any case. The appeal is disposed of accordingly.

Place :CHANDIGARH

Signature

Date : 28.10.2026

CHANDIGARH Jatinder Pal Singh

Designation : Member

Jurisdiction :Chandigarh

ORDER

The present appeal has been filed by M/s JSW Vallabh Tin Plate Pvt. Ltd. (now known as JSW Steel Coated Products Ltd.), hereinafter referred to as "the Appellant", against Order-in-Appeal No. LUD-GST-001-APP-67/2024 dated 01.03.2024 ("the Impugned Order") passed by the Additional Commissioner, GGST Appeals Commissionerate, Ludhiana ("the Appellate Authority"). It is stated in the Appeal Memo that M/s JSW Vallabh Tin Plate Pvt. Ltd. amalgamated with M/s JSW Steel Coated Products Limited as per NCLT Order dated 19.05.2023. The Appellant is registered with the CGST Department with GSTIN 03AAACN5702D1Z6.

2. Before proceeding further, it is relevant to note that the cause title of the present appeal appearing on the GSTAT Portal is: "Ashwani Kumar Sharma Vs. Bhagat Deepak Kumar, Joint Commissioner, Ludhiana and Ors.". It appears that the name of the official who has filed the appeal on behalf of the Appellant company is appearing as the Appellant in the cause title. Further, the name of the Appellate Authority who has passed the Impugned Order is appearing as the Respondent in the cause title. As per Rule 33(1) of the Goods and Services Tax Appellate Tribunal (Procedure) Rules, 2025, in an appeal filed by a person other than the Commissioner, the Commissioner concerned shall be made the respondent to the appeal. Hence, the cause title of this appeal should be corrected and read as: "M/s JSW Vallabh Tin Plate Pvt. Ltd. (now JSW Steel Coated Products Ltd.) Vs. Commissioner, CGST, Chandigarh".

BRIEF FACTS

3. In brief, the facts of the case are that the Appellant was engaged in manufacture and sale of Coated Steel Sheets/Coils. The Appellant company received capital goods during the pre-GST period i.e., prior to 01.07.2017. As mandatory and routine inspection of the capital goods received was pending, CENVAT credit was not availed in respect of a few Invoices/ Bills of Entry, during the pre-GST period. By the time inspection was over and the goods were accepted, the GST regime came into effect. Therefore the Appellant could not avail CENVAT credit on the said capital goods. The Appellant claimed Input Tax Credit ("ITC") in respect of the Central Excise duty / Additional Duty of Customs as per the relevant Invoices/ Bills of Entry, by including the relevant Invoices / Bills of Entry in TRAN-01.

4. The Superintendent, CGST, Range-2, Rajpura issued Show Cause Notice No. CGST-20/CERA Audit/RI/03/2022/77 dated 25.05.2022 ("the SCN") in Form DRC-01, proposing disallowance of the ITC availed by the Appellant through TRAN-1 along with recovery of interest and imposition of penalty, alleging violation of the provisions of Section 140(2) of the CGST Act, 2017. The Superintendent passed Order-in-Original No. 01/GST/Supdt/R-II/RJP/2022-23 dated 07.11.2022 ("the OIO") disallowing ITC of Rs. 2,13,593/- availed through TRAN-1, and ordered recovery of interest and imposition of penalty. In the OIO, it was also held that out of the total amount, ITC of Rs. 1,54,400/- was claimed against a single invoice (No. 3500117 dated 11.04.2017) which contained an annexure detailing 81 invoices. It was held that accumulated credit of these 81 invoices had been taken against the single Invoice dated 11.04.2017, as ITC for multiple invoices is not admissible against a single invoice.

5. Aggrieved by the OIO, the Appellant filed an appeal before the Appellate Authority, who vide the Impugned Order rejected the appeal. The Appellant has filed the present appeal before this Tribunal against the Impugned Order.

6. The grounds of appeal advanced by the Appellant are as under:

i. The Appellant had not availed the CENVAT credit on the capital goods in their Central Excise return (ER-1), due to pending inspection of the materials. By the time the inspection was done and the materials were accepted, the GST regime came into effect. Therefore, the Appellant claimed and availed 100% credit on the capital goods, through TRAN-1. Since CENVAT credit of the capital goods was not at all availed earlier in the pre-GST regime, the Appellant is entitled to take the remaining/full credit (i.e., 100% credit) on the capital goods through TRAN-1, which is within the provisions of Section 140(2) of the CGST Act.

ii. As per Section 140(2) of the CGST Act, a registered person is entitled to take credit in respect of the duty paid on capital goods that was not carried forward in a return filed under the existing law. The 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 a 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 return can be transitioned to electronic credit ledger through TRAN-1, whether it is 50% or 100%, as the Section does not specify the quantum of credit. Therefore, transition of 100% credit on capital goods through TRAN-1 was very well within the provisions of the law, since the credit was not carried forward in the Central Excise return.

iii. The credit which is restricted to be carried forward through TRAN-1 is the credit which is not admissible under the erstwhile law and also not admissible under the GST law. In the present case there is no dispute whatsoever regarding the admissibility of credit of capital goods under the erstwhile law and also under the GST law and therefore denial of the credit relying upon Section 140(2) is completely misplaced and hence legally unsustainable.

iv. The Explanation to Section 140(2) defines the expression "un-availed CENVAT credit" as the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods under the existing law from the aggregate amount of CENVAT credit that was eligible under existing law. Since the Appellant has not availed credit on capital goods in a Central Excise return (i.e., under existing law), 100% credit remained un-availed. In other words, "un-availed CENVAT credit" was the entire Central Excise duty or Additional Duty of Customs (reffred to as "CVD") paid as per the Invoices / Bills of Entry. The Appellant is entitled to take through TRAN-1, the entire un-availed credit i.e., the total amount of Central Excise duty or CVD paid on procurement of capital goods. The aforesaid explanation does not expressly mention the quantum of un-availed credit which is to be called as 'un-availed CENVAT credit'. Therefore, this credit can be 50% or even 100%, as the case may be.

v. Section 140(2) further stipulates that to avail credit under the section, the credit should be admissible as CENVAT credit under the existing law and should also be admissible as input tax credit under the CGST Act, 2017. There is no dispute regarding admissibility of the credit on capital goods in the Appellant's case.

vi. Therefore, availment of 100% credit on capital goods through TRAN-1 is well within the provisions of Section 140(2) of the CGST Act.

vii. Further, neither Rule 4 of the CENVAT Credit Rules nor Section 140(2) of the CGST Act, 2017 stipulates that in case an assessee doesn't avail 50% of credit on capital goods during the year of receipt, he cannot avail credit at all in subsequent years.

viii. The Appellant had availed credit on the strength of valid duty paying documents. The goods were received in the factory of the Appellant and used in the manufacture of finished taxable goods. The credit cannot be denied on procedural and technical issues, if the receipt of material, their duty paid character and utilization in manufacture of final product is not disputed.

ix. The Appellant relied upon the following judgements in their reply to DRC-01A, DRC-01 and in the first appeal, which are also relied upon in the present appeal: *Dausa Transformer*

Udyog Vs. Commissioner of C. Ex. & S.T., Jaipur-I 2016 (337) E.L.T. 605 (Tri. - Del.); Pepsico India Holding P. Ltd. Versus Commissioner of C. Ex., Mumbai-II 2017 [(349) E.L.T. 665 (Tri. - Mumbai)]; Raymond Ltd. Vs. Commissioner of Central Excise, Bhopal 2014 (300) E.L.T. 130 (Tri. - Del.); Rico Auto Industries Ltd. Vs. Commissioner of C. Ex., Delhi-III 2013 (293) E.L.T. 545 (Tri. - Del.).

x. The conditions for availing the credit during the pre-GST regime were provided in Rule 4 of CENVAT Credit Rules, 2004. Clause 2(a) of Rule 4 inter-alia provides that: "The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent. of the duty paid on such capital goods in the same financial year".

xi. The Hon'ble CESTAT has held in the case of *Sumangal Glass Industries Pvt Ltd Vs Commissioner of Central Excise And Service Tax [2020-TIOL-388-CESTAT-Ahm],* that since the assessee had not availed the 50% credit in the year of procurement, availment of 100% credit in a subsequent year was in order and credit cannot be denied. The ratio of the judgement is squarely applicable to the facts of Appellant's case. Credit cannot be denied merely for the reason that 50% of the credit was not availed in the year of procurement and 100% credit was availed through TRAN-01.

xii. The observation of the Appellate Authority that the cases relied upon by the Appellant are based on different facts is therefore not correct.

xiii. The credit was available as per the CENVAT Credit Rules within one year from the date of invoices. Since GST was introduced with effect from 01.07.2017, the company was required to avail the credit through TRAN-1, which was duly complied with. The right which accrued to the company as per the CENVAT Credit Rules cannot be taken away by citing mere procedural or technical formalities. The company is entitled to refund of CENVAT credit, if the credit was not transmitted through TRAN-1, as held by the Hon'ble CESTAT in the case of *M/S. Bharat Heavy Electricals Ltd Vs. Commissioner of GST and Central Excise, Chennai Outer Commissionerate, [2021- TIOL-827-CESTAT-Mad*]. In that case the assessee had not availed credit on invoices pertaining to pre-GST period and not transitioned through TRAN-1, but claimed refund of CENVAT credit. The Hon'ble Tribunal allowed refund of CENVAT credit.

xiv. The entitlement to credit on the purchases made in the pre-GST regime as per then existing CENVAT credit rules is a vested right and, therefore, it cannot be taken away. The

right to the credit had become absolute under the Central Excise Act and CENVAT Credit Rules, 2004 and, hence, the credit is indefeasible and the same cannot be taken away. It is legitimate for a going concern to expect that it will be allowed to carry forward and utilize the CENVAT credit after satisfying all the conditions as mentioned in the Central Excise Act or CENVAT Credit Rules, 2004 and, therefore, disallowing such vested right is against Article 14 of the Constitution as it goes against the essence of doctrine of legitimate expectation. The right to carry forward credit is a right or privilege, acquired and accrued under the repealed Central Excise Act, 1944 and it has been saved under section 174(2)(c) of the CGST Act, 2017 and, therefore, it cannot be allowed to lapse.

xv. In the following cases, it has been held that CENVAT Credit is a vested right: *Adfert Technologies (P) Ltd. [2020 (32) G.S.T.L. 726 (P & H)] – SLP filed by the department against the judgement has not been admitted by the Hon'ble Supreme Court; Siddharth Enterprises vs Nodal Officer [2019 (29) G.S.T.L. 664 (Guj.)]; Brand Equity Treaties Ltd vs Union of India [2020 (38) G.S.T.L. 10 (Del.)].*

xvi. The provisions of Section 140(2) of the CGST Act have been duly complied with and therefore the allegation of non-compliance is totally incorrect and baseless.

xvii. There is no restriction either under Section 140(2) of the CGST Act or CENVAT credit rules that if the taxpayer has not availed 50% of the CENVAT credit on capital goods in ER-1, he is not entitled to transfer the entire amount as ITC through TRAN-1. The provisions of Section 140(2) specifically permit transition of the credit not availed under existing law, through TRAN-1. Therefore, the Order-in-Original and impugned Order-in-Appeal have been passed ignoring the provisions of the Section 140(2) of the CGST Act, 2017 and the CENVAT Credit Rules, 2004.

xviii. On the second issue of claiming credit of Rs. 1,54,400/- in the TRAN1, the Adjudicating Authority and Appellate Authority had observed that the Appellant has claimed credit of Rs. 1,54,400/- against a single Invoice No. 3500117 dated 11.04.2017 which contains an Annexure detailing 81 Invoices, whose accumulated credit has been availed against the single invoice dated 11.04.2017, which is not admissible to the Noticee. However, the Appellant has in fact claimed credit of 81 Invoices in the TRAN-1, the total credit of which works out to Rs.1,54,400/-. However, by a clerical oversight, only one invoice number, viz. the first invoice number, has been filled up leaving out details of the remaining 80 Invoices and against which the total credit amount of Rs.1,54,400/- has been claimed. It is admitted that due to such oversight, details of remaining 80 Invoices are not apparent in the TRAN-1 giving an impression of having claimed the entire credit against one single invoice.

xix. The audit objection and the SCN alleged that none of the invoices in respect of this claim were available with the Appellant. However, all the 81 Invoices in respect of the said claim of Rs.1,54,400/- are available. Copies of all these invoices along with a list of the same indicating the total amount of credit claimed has been attached as ANNEXURE-10.

xx. Credit in respect of all the 81 Invoices was claimed in the TRAN-1 within the time period specified under CGST laws and none of these invoices were beyond the specified time period of one year. All the conditions for eligibility of CENVAT credit in respect of these 81 Invoices have been satisfied. Since there is no dispute regarding receipt of the material, duty paying character thereof, usage of the material, mere procedural issues such as disclosure in the TRAN-1 return should not come in the way of allowing the substantive benefit of ITC, as per the judgements relied upon by the Appellant.

xxi. The Order-In-Appeal was passed without any discussion on the judgements relied by the Appellant. The Order-In-Appeal is therefore liable to be set-aside for being a cryptic order.

xxii. The Appellate Authority has observed that as per the CBIC Circular No.182/14/2022-GST dated 10.11.2022, if no credit was availed earlier, credit of entire amount cannot be availed through this Table. It is not mentioned in the Order-in-Appeal, under which provisions of the CGST Act/Rules, the clarification draws its authority to restrict the right of the Appellant to transmit the credit that was accrued to him. Further, the Board's Circular cannot override the statutory provisions, as held in a number of the judgements by the Hon'ble Supreme Court including in *Commissioner of Central Excise, Bolpur Vs. Ratan Metling & Wire Industries [2008 (12) STR 416 (S.C.)]*.

xxiii. Levy of penalty of Rs. 2,13,593/-, equivalent to 100% of ITC disallowed, under Section 122(2)(a) of the CGST Act is not tenable, as Section 122(2)(a) prescribes penalty of Rs.10,000/- or 10% of the tax due from the taxpayer whichever is higher.

xxiv. No penalty is leviable in the instant case, since availment of ITC by way of transfer through TRAN-01 was in order. Therefore, levy of penalty is totally illegal, arbitrary and against the provisions of Section 122(2)(a).

xv. Since dis-allowance of ITC is illegal, levy of interest also does not stand.

DISCUSSION AND FINDINGS

7. We have heard Sh. Hari Babu Koduri, AVP (Indirect Taxation) of the Appellant company, and Sh. Veer Singh Meena, Authorised Representative for the Respondent CGST

Department. We have considered the facts of the case, the documents on record, and the arguments advanced by both sides.

8. In the present case transitional credit availed by the Appellant through TRAN-1 has been disallowed basically on two grounds:

(i) The first ground is that the Appellant had received capital goods during the pre-GST period i.e., prior to 01.07.2017, but had availed the entire credit of duty paid on the said capital goods amounting Rs. 2,13,593/- in Para 6(a) of TRAN-01, which was not admissible to them. The authorities below took the view that transitional credit admissible under sub-section 140(2) of CGST Act, 2017 pertains to those taxpayers who have availed a portion of the CENVAT Credit in respect of the duty paid on capital goods through their Central Excise or Service Tax returns. If no credit was availed earlier, credit of the entire amount could not be availed through this Table, it was held.

(ii) The second ground was that out of the total amount Rs. 2,13,593/-, ITC of Rs. 1,54,400/- was claimed against a single invoice (No. 3500117 dated 11.04.2017) which contained an annexure detailing 81 invoices. It was held that accumulated credit of these 81 invoices had been taken against the single Invoice dated 11.04.2017, which was not admissible.

9. The first issue involved in the present appeal is whether the entire credit of the duty paid (Central Excise or Additional Duty of Customs) on capital goods can be allowed through TRAN-1 under Section 140(2) of the CGST Act, 2017. This issue has been decided by this bench vide order dated 16.10.2026 passed in Appeal No. APL/28/CHD/2026 in the case of *Deltron (a Division of Continental Device India Pvt. Ltd.) Vs. Commissioner CGST Ludhiana & Ors. 2026 (10) TMI 1226*. The relevant extract from that order is reproduced as under:

"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.

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 subsection 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."

10. In view of our findings in the case of *Deltron (supra)*, we hold that transitional credit through TRAN-1 is allowed in respect of duty paid on capital goods for which no CENVAT credit was taken under the Central Excise regime, and we set aside the Impugned Order to that extent.

11. As regards the second ground on which the ITC has been denied, we find that the original Adjudicating Authority had held in the OIO that out of the total amount, credit of Rs. 1,54,400/- was claimed against a single invoice No. 3500117 dated 11.04.2017 which contained an annexure detailing 81 invoices whose accumulated credit had been taken against the single invoice dated 11.04.2017, which was not admissible. The first appeal filed by the Appellant was also rejected by the Appellate Authority on this count.

12. In the grounds of appeal filed by the Appellant before us, the Appellant has claimed that they had taken credit of 81 Invoices in the TRAN-1, the total credit of which worked out to Rs. 1,54,400/-. However, by a clerical oversight, only one invoice number (viz. the first invoice number) had been filled up leaving out the details of the remaining 80 Invoices and against which the total credit amount of Rs.1,54,400/- was claimed. The Appellant has admitted that due to such oversight, the details of the remaining 80 Invoices are not apparent in the TRAN-1, giving an impression of having claimed the entire credit against one single invoice. The Appellant has further submitted that though the SCN alleged that none of the invoices in respect of this claim were available with the Appellant, all the 81 Invoices in respect of the said claim of Rs.1,54,400/- are available with the Appellant.

13. We have held hereinabove that under sub-section 140(2) of the CGST Act, 2017 the Appellant was entitled to avail as transitional credit, the entire credit in respect of the duty (Central Excise or Additional Duty of Customs) paid on the capital goods amounting Rs. 2,13,593/-. Out of this amount, an amount of Rs. 1,54,400/- was denied by the Adjudicating Authority on the additional ground that credit relating to 81 Invoices had been availed on the basis of a single invoice.

14. The Appellant has submitted that: (i) the credit amount of Rs. 1,54,400/- was the total credit relating to these 81 invoices; (ii) due to a clerical oversight, only one invoice number (viz. the first invoice number) was filled up in the TRAN-1, leaving out details of the remaining 80 Invoices; (iii) due to this oversight, details of the remaining 80 Invoices were not apparent in the TRAN-1 giving an impression that credit had been taken against one single invoice.

15. In this regard, we note that the authorities below have themselves observed that the single invoice (Invoice No. 3500117 dated 11.04.2017) contained an annexure detailing 81 invoices. Furthermore, although in the SCN it was alleged that the invoices in respect of this claim were not available with the Appellant, the Appellant has submitted that all the 81 Invoices in respect of the said claim of Rs. 1,54,400/- are available with them. Copies of all these invoices along with a list of the same indicating the total amount of credit claimed has been attached as Annexure-10 in the Appeal.

16. We see no reason why the Appellant should not be allowed the opportunity to produce these invoices before the original authority. The original authority shall verify these invoices and allow the credit, if otherwise in order. Since the matter relates to transitional credit in respect of duty suffered on capital goods before GST was brought into force, we find it expedient to direct the original authority to complete this exercise expeditiously, and within one month in any case. The matter is referred back to the original adjudicating authority to this extent.

CONCLUSION AND ORDER

17. In view of the discussion and findings recorded hereinabove, we order that:

(i) The Appellant is entitled to avail as transitional credit, the entire credit in respect of the duty paid on the capital goods amounting Rs. 2,13,593/-.

(ii) The Appellant will immediately submit all the 81 Invoices in respect of the claim of credit amounting to Rs. 1,54,400/-, before the original authority. The original authority shall

verify these invoices and allow the credit, if otherwise in order. The original authority shall complete this exercise expeditiously, and within one month in any case.

18. The appeal is disposed of accordingly.

(Jatinder Pal Singh)

(Pradeep Kumar Goel)

Dated: 28.10.2026