GOODS AND SERVICES TAX APPELLATE TRIBUNAL
THIRUVANANTHAPURAM BENCH
Division Bench : Court No I

APPEAL NO : APL/39/TVP/2026
(hearing in hybrid mode)

[arising out of the OIA No. JC-KTM-2023-GSTA(ALPY)1O7 dated 27-6-2024 passed by the Joint Commissioner (Appeals), State GST, Kottayam]

DEVASURYA TRADERS .....Appellant

VERSUS

THE COMMISSIONER OF KERALA STATE GST
THIRUVANANTHAPURAM .....Respondent

for Appellant
S Ajayghosh Kumar, Advocate

for Respondent
Mansur MI, AR

CORAM : Hon'ble Shri Subramanya Rayaprol, Vice-President
Hon'ble Shri Ramamoorthi Sriram, Member (Technical)

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FINAL ORDER NO: 16/TVP/KERALAM/2026

Date of Hearing: 10-9-2026
Date of Order: 30-10-2026

Order Per: Subramanya Rayaprol, Vice President

1.0 Mr S Ajayghosh Kumar, Ld Advocate appeared for the appellants. Mr Mansur MI, Ld Joint Commissioner appeared as AR for the respondents.

2.0 Ld Advocate for the appellant submits that the appellant is a dealer in waste paper and scrap and had purchased a Truck Chassis with Engine for body building purpose from M/s Autobahn Trucking Corporation Pvt Ltd per Invoice No. VES/17-18/0118 dated 2-6-2017. The Tax amount (VAT) involved was Rs. 175916.79. The

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purchase and corresponding ITC were disclosed in Part C of VAT return filed for June 2017, the statement of purchases uploaded by the appellant, and after introduction of GST w.e.f. 1-7-2017, the appellant claimed the said credit as transitional credit under section 140 of the CGST/SGST Act 2017, through FORM TRAN1. The Transitional credit was rejected only on the ground that the credit was not reflected in Part E of VAT return/Form 25 and Form 25 application was not filed by the appellant within 30 days, and the first appellate authority also confirmed the rejection. He further submits that the appellant is eligible for transitional credit under Section 140 of the CGST/KGST Act. He also submits that the truck chassis with engine which is a capital asset was not put to use during erstwhile VAT period. The appellant could have filed Form 25 (of KVAT regime) application within 30 days from the date specified in section 11(2) of the KVAT Act. The Hon'ble High Court of Kerala has directly interpreted this in the case of PK Joseph Vs Commercial Tax Officer in WP@ No.15559/2014 dated 25-08-2014. The Hon’ble High Court held that the 30 days run from the date on which the capital goods were put to commercial use, not from their date of purchase. Therefore, the alleged failure to obtain Form 25B before 30-06-2017 cannot automatically be equated with absence of substantive entitlement. He submits that they had fulfilled the conditions for availing the transitional credit and are eligible for the same. He prays that the appeals may kindly be allowed.

3.0 Ld AR for the Respondent submits that there are two issues.

(i) for Rs. 84,500/- the appellant has claimed the Credit in Tran1, showing it as the credit balance as on 30-6-2017, which is not correct as there was no balance lying in the last KVAT Return filed for the month of June-2017.

(ii) For Rs. 175916.79 issue pertains to the Transitional credit of VAT paid on the Truck

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purchased by the appellant during the erstwhile VAT Regime prior to 1-7-2017. Section 11(2) of the KVAT Act renders capital goods credit conditional, and not automatic. Rule 13(1B) of KVAT Rules makes the eligibility conditional where value of goods exceeding Rs. 5 lakh, subject to an application in Form 25 and sanction in Form 25B. The Appellant filed no such application and obtained no such sanction. The Appellant's own return recorded NIL credit carried forward. Two independent statutory remedies were available to correct this position, and neither was availed of. Section 140(2) of the Kerala SGST Act permits carry-forward only of credit that was already admissible under the existing law. As the credit in question was never so admissible, it is not available for carryforward. He prays that the appeals may be dismissed and to uphold the order of the JC (Appeals) dated 27-6-2024.

4.0 Heard both sides. We find that the issue to be decided in the present case is

Whether the appellant is eligible to avail the ITC of KVAT amount paid during the existing law (Kerala VAT) on Truck purchased in June-2017 and put to use after 1-7-2017 and availed the ITC during the GST regime through the transitional credit in TRAN1 in terms of Section 140 of the CGST Act, 2017, even when such VAT credit balance was not reflecting in the KVAT Returns filed by them as on 30-6-2017.

5.0 We find that the appellant is a proprietorship concern and are registered with the GSTIN 32BTDPP2881HlZN, and are engaged in the business as scrap dealer and had purchased a Truck Engine with chassis for transportation of goods. The State Tax Officer, SGST Department, Alappuzha scrutinised the returns of the appellant for the tax period July 2017 to March 2018 and observed that the appellant had filed TRAN-1 application and had availed an amount of Rs. 2,60,416.79 as SGST ITC which they

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are not eligible to claim. The breakup of the said amount is:

No	Description	Tax Amount claimed as ITC of SGST in Tran1 (Rs.)
1	KVAT Credit balance carried forward from June-2017 KVAT Return	84,500.00
2	Purchase of Vehicle (914 R 4X2 3760 FSD) vide Invoice No. VES/17-18/0118 dated 2-6-2017	1,75,916.79
	Total	2,60,416.79

6.0 We find that the appellant has submitted a copy of the KVAT return filed for the period June-2017 on 30-12-2017, wherein at Part I (a) (xiii) – Balance VAT Tax at Credit is shown as 'NIL'. Hence, the contention of the Ld AR is correct that the appellant had no credit at hand as on 30-6-2017, to claim in the TRAN1. The appellant also has not given any justification in their written submission to this point, and has not contested the same. Therefore, the claim of Rs. 84,500/- of the appellant is correctly rejected by the JC (Appeals), and is upheld. We find that the appellant is not eligible for the credit of Rs. 84,500/- as claimed in the TRAN1, and the appeals of the appellant to that extent is liable to be rejected.

7.0 We also find that the appellant has claimed the credit in TRAN1 of Rs. 1,75,916.79 on the purchase of Truck Chassis with Engine from M/s Autobahn Trucking Corporation Pvt Ltd per Invoice No. VES/17-18/0118 dated 2-6-2017, of value of Rs. 12,13,219.21. On seeing the KVAT Return of June-2017, we find that the appellant had declared in Part C – Turnover on purchase of goods – Local purchase eligible for ITC, of VAT return filed for June 2017 the details of purchase of the said Truck. The appellant has also filed a statement of purchases made during the month of June-2017. The Transitional credit was rejected only on the ground that the credit was not reflected in Part E of VAT return/Form 25 and Form 25 application was not filed by

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the appellant within 30 days, and the JC (Appeals) also confirmed the rejection. As per the appellant's contention, the credit could be availed only when the vehicle was put into use, and the vehicle was purchased on 2-6-2017 and could not be put to use on or before 30-6-2017, as some body building work was not done. Therefore, the truck chassis with engine which is a capital asset was not put to use during erstwhile VAT period. Therefore, the appellant could have filed Form 25 (of KVAT regime) application within 30 days from the date specified in section 11(2) of the KVAT Act. But, the Truck – is a goods vehicle, and could have been put to use after the body building work was over, and ready for transporting the goods. Therefore, by the time the Truck was ready to use, the new GST Regime had introduced, and the only method prescribed for availing the ITC was through the TRAN1 form, to be filed on the common GST Portal. There was no other condition attached to the TRAN1 form, under Section 140 of the CGST/KGST Act. The appellant had the copy of invoice and they were eligible for ITC in the 'existing law' i.e. under erstwhile KVAT Act, and also they were eligible for ITC on the goods used for transportation of goods in the GST Law also.

8.0 The Hon'ble High Court of Kerala in the case of PK Joseph Vs Commercial Tax Officer in WP (C) No.15559 of 2014 (T) dated 25-8-2014 held that the 30 days run from the date on which the capital goods were put to commercial use, not from their date of purchase. Therefore, the alleged failure to obtain Form 25B before 30-6-2017 cannot automatically be equated with absence of substantive entitlement. We find that during the initial period of GST implementation there were many hurdles which were smoothly ironed out by the Government, and wherever such disputes have arisen, it has to be seen with a judicial eye so as to overcome the procedural infractions, in the route to justice. If there was no transition to the GST Law, then there would not been any

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difficulty. In the present case, the appellant has been made a victim of procedure. Based on the above findings, we are convinced that the appellant is eligible for ITC during the earlier VAT regime as well as the new GST Regime, and only difficulty was to overcome the procedural difficulty. We find that the appellant is eligible for the credit of Rs. 1,75,916.79 on the purchase of Truck Chassis with Engine per Invoice No. VES/17-18/0118 dated 2-6-2017, claimed in the TRAN1.

9.0 In view of the para 7 & 8 above, we answer the issue whether the appellant is eligible to avail the ITC of KVAT amount paid during the existing law (Kerala VAT) on Truck purchased in June-2017 and put to use after 1-7-2017 and availed the ITC during the GST regime through the transitional credit in TRAN1 in terms of Section 140 of the CGST Act, 2017, in affirmative.

10.0 Accordingly, we pass the following order.

1. The appeals of the appellant is rejected to the extent of ITC claim of Rs. 84500/-.
2. The OIA is quashed and set aside and the appeals of the appellant is allowed to the extent of ITC claim of Rs. 175916.79.
3. The appeals are partially allowed in above terms with consequential relief to the appellant.

(Order pronounced in open court)

धर्मो रक्षति रक्षितः

Subramanya Rayaprol
Vice-President

Ramamoorthi Sriram
Member (Technical)

Dated: 30-10-2026