GSTAT

State Bench Hyderabad

Division Bench Court No. Court II

APL/240/HYD/2026

SAIN MEDICAMENTS PRIVATE LIMITED **.....Appellant**

Versus

COMMISSIONER OF CENTRAL TAX, COMMISSIONER OF CENTRAL TAX HYDERABAD GST COMMISSIONERATE, GST BHAVAN BASHEERBAGH HYDERABAD & ORS. **.....Respondent**

Quorum

Hon'ble A P Ravi, Member(Judicial)
Hon'ble Duvvuri Krishna Srinivas, Member (Technical)

Counsel for Appellant
PVB CHARY

Counsel for Respondent
SHRI S. GOURI SHANKER AND SHRI AND BEN GOPAL NAIDU

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. : ZN360361026000468H **Date of Hearing: 01/10/2026**

Date of order : 30/10/2026

1.	GSTIN/Temporary ID/UIN - 36AACCS8292F1Z3	
2.	Appeal Case Reference no. - APL/240/HYD/2026	Date - 20/05/2026
3.	Name of the appellant - SAIN MEDICAMENTS PRIVATE LIMITED , rskanodia@yahoo.co.in , 9849013446	

4.	Name of the respondant - 1. Office of the Chief Commissioner of GST and Customs Hyderabad Zone , madalavd.g099201@gov.in , 9849247893 2. Commissioner of Central Tax	
5.	Order appealed against - AD360224013029I	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD3609240037376	Date - 03/09/2024
6.	Personal Hearing - 30/10/2026 01/10/2026 14/08/2026	
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled	
8.	Order in brief - The dispute is in regard to disallowance of transitional credit of Rs.12,91,000/- carried forward in table NO,. 5A of TRAN-1 filed under Section 140(1) of CGST Act and imposition of interest and 100% penalty under Section 50 and Section 74 read with Section 122 (2)(b) of the Act respectively. The Appellant could not file their ER-1 return for the month of April, 2017 due to technical glitch in their portal. However, the appellant acted raising tickets. For rectification, filed physical copy of the said return with the jurisdictional officer and informed him of the technical glitch. After hearing both the sides, the appeal was allowed and the impugned passed by the First Appellate Authority is set aside with consequential relief to the appellant.	

Summary of Order

9.	If demand order then whether demand quantified: Yes									

Section-I

Particulars	Central tax		State/UT tax		Integrated tax		Cess		Total	
	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount
1	2	3	4	5	6	7	8	9	10	11

(a) Tax	1291000	0	0	0	0	0	0	0	1291000	0
(b) Interest	0	0	0	0	0	0	0	0	0	0
(c) Penalty	1291000	0	0	0	0	0	0	0	1291000	0
(d) Fees	0	0	0	0	0	0	0	0	0	0
(e) Others		0		0		0		0		0
(f) Refund		0		0		0		0		0

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 conditions prescribed under Section 140 are not satisfied. ITC is not a statutory right but a concession subject to satisfying prescribed conditions	

ORDER

FINAL ORDER- 25/COURT-II/HYD/2026

Per Hon'ble Shri D.K. Srinivas, Member (Technical)

1.0 M/s Sain Medicaments Pvt. Ltd. (hereinafter referred to as "Appellant") has instituted the present appeal No. APL/240/HYD/2026, under Sec. 112 of Central Goods and Services Act 2017 (hereinafter referred to as "the Act") against the Order-in-Appeal (OIA) No. HYD-GST-HYC-APP-1-020-24-25-GST dated 31.5.2024, Form GST APL-04 order reference No. ZD

3609240037376 dated 3.9.2024 (hereinafter referred to as "the impugned order") passed by the First Appellate Authority (hereinafter referred to as "FAA"). The appellant is a registered taxable person (GSTIN-36AACCS8292F1Z3) engaged in manufacture and supplier of medicaments falling under chapter 30 of GST Tariff.

2.0 The dispute in the present appeal is in regard to dis-allowance of Transitional Credit of Rs. 12,91,000, carried forward in Table-5(a) of Form GSTR TRAN-1 filed under Sec. 140(1) of the Act and imposition of Interest and 100% penalty under Sec. 50 and Sec. 74 read with Sec. 122(2) (b) of the Act, respectively.

3.0 As the ER-1 return for the month of April 2017 was not filed, referring to Second proviso to Sec. 140(1) of the Act, it was alleged that appellant is not entitled to carry forward the Transitional Credit. Accordingly, show cause notice (SCN) dated 31.1.2022 was issued proposing denial of irregular Transitional Credit availed in terms of Sec. 74(1) of the Act, recovery of interest due under Sec. 50(3) of the Act and imposition of penalty under Sec. 122(2) (a). Though the appellant explained that due to technical glitches in official (ACES) portal, the ER-1 return for the month of April 2017 was not filed and evidence was let in to say that they have corresponded with CBIC-Mitra Help Desk, the original Adjudicating Authority (hereinafter referred to as "AA") disallowed transition credit, demanded interest and imposed mandatory 100% penalty under Sec. 122 (2)(b) read with Sec. 74 of the Act.

4.0 Aggrieved by the OIO, the appellant preferred an appeal before FAA under Sec. 107(1) of the Act, the FAA disposed the appeal vide the impugned order. In the impugned order, the main observations are as follows:-

i) ITC is a concession and not vested right and therefore can't be claimed as a matter of right, but only in terms of provisions of statute, quoting certain judgments, said that every litigant has vested right in substantive law but no such rights exists in procedural law. As the appellant did not satisfy the criteria of furnishing all the returns as per provisions of first proviso to Sec. 140(1) of the Act, rejected the claim.

ii) As the appellant is well aware of the embargo under clause (ii) of proviso 1 of Sec. 140(1) and despite knowing that they did not furnish all the returns required under existing law for the period of six months immediately preceding the appointed date, wilfully took the credit. Hence penal provisions under Sec. 74 read with Sec. 122(2) (b) of the Act were invoked to impose penalty.

5.0 Being aggrieved with impugned order, the appellant preferred the present appeal contending that the impugned order is a non-speaking order in as much as he failed to give reasonable findings to contentions raised by the appellant.

Submissions by Appellants

6.0 The Department did not dispute the eligibility of benefit of CENVAT credit under existing laws and filing of ER1 return manually for the month of April 2017. Non-filing of return for the month of April 2017 due to technical glitches in ACES portal wherein the subsequent returns for the months of May 2017 and June 2017 were filed. The closing balance of April 2017 was carried forward and same credit was lying as balance on the appointed date for which GST TRAN 1 declaration was filed. The appellant relied upon Hon'ble High Court

of Bombay decision in case of Johnson Matthey Chemicals (P) Ltd Vs. UOI reported in (2025) 32 centax 353 (BOM).

6.1 Substantial benefit can't be deprived for mere technical reasons particularly in view of irrefutable fact that the credit relating to April 2017 was carried forward in the subsequent monthly returns and fact was not controverted by department. Further, the fact that when ACES portal was accessible, the ER-1 return for the month of April 2017 was uploaded successfully, should have been taken note of same and allowed the credit.

6.2 The decisions relied by the FAA are not applicable to the facts of appellant's case. In those cases, the eligibility to the benefit of credit under the existing laws was in dispute. But in the case of appellant, the eligibility to the benefit of CENVAT credit was never in dispute and transfer of the credit from the existing law to GST regime was questioned for technical reasons.

6.3 The FAA ought to have seen that procedural law is sub-servient to substantial law and should be interpreted liberally to further justice and not to hinder it with hyper technicalities. In support they quoted certain judgments.

6.4 The AA and FAA were incorrect in disallowing the credit, particularly when they appreciated the genuine technical glitches faced by the appellant in uploading the April 2017 ER-1 return. Further, they ought to have seen and appreciated that in subsequent returns filed for the months of May 2017 and June 2017, the closing balance of April 2017 was carried forward and the same credit was lying in balance on the appointed date.

6.5 The department ought to have seen and appreciated that when there is no dispute in regard to payment of central Excise duty in respect of clearances made in April 2017 and payment of tax and no SCN was issued for alleged non-filing for the said month and there is no dispute in regard to the admissibility of credit and authorities themselves recognised the fact of technical glitches in the system.

6.6 There are material inconsistencies in SCN. In paragraph 4.2 of SCN, while discussing violations by assessee, it was stated that provisions of Sec. 73(1) appear to be attracted. Whereas in paragraph 5(i) of SCN, Sec. 74(1) was invoked to show cause to the assessee. This shows lack of application of mind.

6.7 While the SCN proposed at paragraph 5(iii), a penalty under clause (a) of sub-section (2) of Sec. 122 of the Act, the Learned AA and Learned FAA confirmed penalty under Sec. 74 read with Sec. 122(2)(b) of the Act. This indicates the OIO and impugned order travelled beyond the specific proposals made in the SCN.

6.8 The appellant submits that invocation of extended period of limitation under Sec. 74 is entirely unlawful and arbitrary. The appellant has informed the department on 12.5.2017 with detailed intimation on system issues preventing submission of April 2017 ER-1 return. There is no fraud, concealment or suppression, hence department can’t invoke Sec. 74 of the Act. Consequently, the department was strictly bound to act within normal period of limitation under Sec.73, making the SCN issued in 2022 severely time-barred.

Submissions by Respondents (Department)

7.0 Verification of GST TRAN 1 declaration with their ER-1 and ST-3 returns, revealed that the appellant has availed an amount of Rs. 12,91,000/- as transitional credit in Table 5(a) of TRAN-1 return, claiming the same as the closing balance of CENVAT credit available as on 30.6.2017. Verification also revealed that ER-1 return for the month of April 2017 has not been filed. Clause (ii) of first proviso to Sec. 140(1) of the Act provides that a registered person shall not be allowed to take credit, where he has not furnished all the returns under the existing law for a period of six months immediately preceding the appointed date.

7.1 The ITC is in the nature of a concession granted, to the registered persons and that the conditions subject to which such concession is granted, including time limits, are to be strictly followed; as concession can't be availed unless the conditions relating thereto are fully complied with. The FAA followed the decisions of Hon'ble Supreme Court in Jayam and Company Vs Asst. Commissioner 2016 (9) TMI408-SC, the decision of Hon'ble High Court of Andhra Pradesh in Tirumala Konda Playwoods Vs. Asst. Commissioner of State Tax 2023(76) G.S.T.L 172 (AP) and decision of Hon'ble High Court of Calcutta in BBA infrastructure Ltd. Vs Senior JC of State Tax (2023) 13 CENTAX 181 (Cal) in recording reasons and deciding the contentions of appellants. Hence it is a speaking order.

7.2 The difficulties pleaded by the appellant was neither ignored nor disbelieved; they were considered at both stages. Para 10 of OIO records the attempts made on 8.6.2017, 12.6.2017, 14.6.2017 and 21.6.2017, the letter submitted to the

range superintendent on 12.5.2017, the tickets lodged with CBIC-Mitra Helpdesk, and the fact that the ER-1 returns for April 2017 was ultimately filed on 27.8.2022. But subsequent filing of ER-1 return, long after the TRAN-1 declaration, can't satisfy the condition that had to be satisfied as on appointed date; the carry forward of the closing balance in the returns for May 2017 and June 2017 is not substitute for compliance with the requirement.

7.3 The department has not disputed the closing balance of CENVAT credit as reflected in ER-1 return for June 2017; the disallowance rests on clause (ii), namely failure to furnish all the returns required under the existing law for the six months immediately preceding the appointed date. The decisions referred to in the impugned order were relied upon for the limited preposition that transitional credit is a concession which can be availed only on satisfaction of conditions prescribed by the statute.

7.4 The impugned order has recorded that the appellant was well aware of the embargo under clause (ii) of the first proviso to Sec. 140(1) and notwithstanding the same, proceeded to take the credit despite knowing that it had not filed all the returns required under the existing law for six months immediately preceding the appointed date, from which an element of wilfulness was perceived, leading to invoking provisions of Sec. 74 read with Sec. 122(2) (b) of the Act.

7.5 On limitation, the SCN dated 31.1.2022 was issued contesting the transitional credit availed for the period 1.7.2017 to 31.3.2018. The notice is therefore within the period prescribed under Sec. 74(10) of the Act, reckoned from the due date for furnishing the annual return for the financial year 2017-18.

8.0 During the personal hearings conducted on 14.08.2026 and 01.10.2026, both sides reiterated their submissions and discussed the relevance of relied upon judgements.

Issues for determination:

9.0 In view of the above, the issues which arise for determination in this appeal are as follows:

i) whether the Appellate Authority was correct in imposing penalties under Sec. 122(2)(b), when the proposals in SCN were invoked under Sec. 122(2)(a)?

ii) whether an undisputed CENVAT credit amount accrued under existing laws and migrated to GST regime via TRAN-1 declaration filed in time, in terms of Sec. 140 of the Act can be disallowed, solely on the ground that appellant failed to file one ER-1 return for the month of April 2017, prior to the appointed date, due to technical glitches in the Departmental portal?

iii) whether in the given facts and circumstances of the case, the Department was legally correct in invoking Sec. 74(1) of the Act against the Tax-payer ?.

Findings and Discussions:

10.0 Before going into merits of the case, the concerned legal provisions need to be examined. Sec. 140 of the Act (Transitional arrangements for input tax credit) read with Rule 117 of the CGST Rules 2017 (hereinafter referred to as "the Rules") provides a procedure for transfer of CENVAT credit lying in balance as on 30.06.2017. In terms of Rule, 117, the appellant should submit a declaration electronically in Form GST TRAN-1 duly signed on the common portal

specifying the amount of credit lying in the balance under the existing laws. For ready reference, Sec. 140(1) of the Act is extracted herein below:

Transitional arrangements for input tax credit

Sec.140 (1) A registered person, other than a person option to pay tax under amount of CENVAT credit (of eligible duties) carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law [within such time and] in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:

(i) where the said amount of credit is not admissible as input tax credit under this Act; or

(ii)where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

10.1 Section 122 deals with imposition of penalty where due taxes were not paid or input tax credit was wrongly availed or utilized;

Penalty for certain offences.-

Section 122. (1) Where a taxable person who-…….

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

(3) Any person who-……..

10.2 Section 74 of the Act deals with cases involving the fraud, or wilful misstatement or suppression of facts to evade tax, which is as follows;

Section 74. Determination of tax 2[, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice. ……..

Explanation 2.- For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

10.3 The concerned SCN was issued on 31.01.2022. Appellant has claimed that he has received it on 25.05.2022. Respondents did not counter about the date of receipt of SCN by Appellant in their written or oral submissions. The relevant charges proposed in SCN are at para 5 of SCN which are as follows.

"Para 5 of SCN:

Now, therefore, M/s Sain Medicaments Pvt. Ltd., 4-3-51 to 72/10, Hanuman Vyayamshala Education Building, Kandaswamy Lane, Sultan Bazar, Hyderabad, Telangana 500095 are hereby required to show cause to the Assistant Commissioner of Central Tax, Abids GST Division, 1st floor, Akhira Shikara Plaza, Jambagh, Nampally, Hyderabad-500001 within 30 (thirty) days of receipt of this Notice as to why:

(i) an amount of Rs. 12,91,000/- (Rupees Twelve lakh Ninety One thousand only), being the irregular transitional credit availed under Table 5(a) of GST TRAN-1 declaration, should not be recovered from them in terms of sub-section (1) of Section 74 of the Central Goods and Services Tax Act, 2017;

(ii) Interest at the applicable rate should not be demanded on the amount mentioned at (i) above under sub-section (3) of Section 50 of the Central Goods and Services Act, 2017;

(iii) penalty should not be imposed on them under clause (a) to sub-section (2) of Section 122 of the Central Goods and Services Act 2017 for their act of wrong / irregular availment of transitional credit;"

It can be seen that penalty was proposed to be imposed under clause (a) to sub-section (2) of Sec.122 of the Act for their act of wrong availment of transitional credit. The O.I.O. dated 29.09.2023 in its order portion at para 14 (iii) mentioned that:

" I impose penalty of Rs.12,91,000/- (Rupees Twelve Lakhs Ninety One thousand Only) under the provisions of Section 74 read with Section 122(2)(b) of CGST Act, 2017. However, in view of Section 74(11) if the amount confirmed and interest thereon is paid within period of thirty days from the date of receipt of this Order, the penalty shall be fifty percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days".

The Adjudicating Authority has imposed 100% penalty under provisions of 74 read with Section 122 (2) (b) of the Act.

The impugned order dated 31.05.2024 at para 14 mentions that;

14 (i) ……

14(ii) ……

14 (iii) "the appellant is well aware that the embargo under clause (ii) of Proviso 1 of Section 140(1) and notwithstanding the same proceeded to take credit. Despite knowing that they did not furnish all the returns required under the existing law for the period of six months immediately preceding the appointed date thereby an element of wilfulness is perceived. I hold that the provisions of Section 74 read

with Section 122(2)(b) of the CGST Act, 2017 are rightly invoked for penal implications for the above act by the appellant." ……..

10.4 From plain reading of SCN, OIO and impugned order, it is evident that penalty was proposed in SCN under Section 122(2)(a). Whereas Adjudicating Authority and First Appellate Authority imposed / confirmed the penalty under provisions of Section 74 read with Section 122 (2)(b) of the Act. Section 122(2)(a) gives power to impose penalty in other than fraud, suppression, wilful-mis-statements etc whereas Sec. 122(2)(b) of the Act gives power to impose penalty in fraud, suppression and wilful-mis-statement etc cases. There are material inconsistencies in SCN, OIO concerned and impugned order and both OIO and OIA travelled beyond the specific proposals made in SCN. Specifically, while the SCN proposed under Sec. 122 (2)(a) of the Act, the Learned AA and FAA confirmed penalty under Sec. 74 read with Sec. 122(2)(b) of the Act. Even in SCN, there is an inherent contradiction. While the SCN has invoked Sec.74(1), which is invoked when ingredients such as fraud, misstatement etc. are alleged, Sec 122(2)(a) is for situations which do not contain these ingredients. In short, both Sec 74(1) and Sec 122(2)(a) do not go together. Hence, the proposal in SCN itself is self-contradictory and bad in law. Accordingly, this proposal itself would not survive the scrutiny of law. Hence the OIO and impugned order are ex facie contrary to the explicit provisions of Sec. 75(7) of the Act. For ready reference, the relevant provision is extracted below:

Section 75 ……..

"(7) The amount of tax, interest and penalty demanded" in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than grounds specified in the notice".

10.5 We find that the correct position of law is to be found in the latest decision of Hon'ble Supreme Court (SC) on the subject in the case of M/s. Armoor Security (India) Private Limited vs. CGST, Delhi East Commissionerate [2025] 177 taxman.com 478 (SC) with specific reference to Sec. 75(7) of the Act wherein the Hon'ble SC has clearly upheld the following principle as laid out in other decisions of the SC.

a) It is well settled that unless the foundation of the case is made out in SCN, Revenue cannot in court argue a case not made out in its SCN ….. [CCE.Bhubaneshwar-1 vs M/s. Champdany Industries Limited – Para 50)]

b) If there is no invocation of the concerned rules in the SCN, it would not be open to the Commissioner to invoke the said rule [commissioner of Central Excise, Nagpur vs Ballarpur Industries Limited MANU/SC/3595/2007].

10.6 The court went on to state that it would be impermissible for an authority to invoke such rules, claims or grounds at a later stage which do not figure in the SCN. That is to say any ground, reasoning or claim which does not figure out in the SCN, cannot be permitted to adversely affect the notice.

We find that our findings are therefore reinforced not only by Sec. 75(7) of the Act, but also the legal imprimatur of the principles thereof in the case of M/s Armoor Security (Supra).

11.0 Coming to the main ground on whose basis the demand was confirmed i.e. non-filing of ER-1 return for the month of April 2017, it is an undisputed fact that the appellant could not file the same before the due date. The appellant has contended in his submissions before lower authorities in appeal filed before this Tribunal that, it is not a case of wilful non-filing of ER-1 return for April 2017, but rather a failure caused entirely by systemic and technical glitches of Departmental portal. There is no dispute with regard to timely filing of ER-1 returns for the months of January, February, March, May and June 2017 returns. The GST authorities did not dispute the closing balance of Rs. 12,91,000 under the existing law and also filing of TRAN-1 application before the due date.

11.1 The department in its counter/submissions have accepted that appellant has made unsuccessful attempts to file/upload April 2017 ER-1 return, letter submitted to Range Superintendent on 12.5.2017, tickets lodged with the CBIC Mitra Helpdesk and the fact that the April 2017 ER-1 return was ultimately filed on 27.8.2022. Department contended that subsequent filing of ER-1 return, long after the TRAN-1 declaration cannot relate back to satisfy the conditions imposed under Sec.140(1) of the Act. Also contended that carry forward of the closing balance of April 2017, in May and June 2017 returns cannot substitute the statutory requirement of furnishing all the returns for six months immediately preceding the appointed date. The AA in his order at para 10 has recorded efforts taken by appellant to file April 2017 ER-1 return, which is as follows:

Para 10 of OIO

> *I find that the tax payer was not able to file the ER-I return for the month of April-17 purely due to technical glitch in the erstwhile CBEC-ACES website and also that the taxpayer has tried to file the return various times but with failure. The taxpayer had also lodged tickets with the cbic mitra helpdesk to resolve the issue but was unable to do so. The taxpayer was finally able to file the ER-1 return on 27.08.2022. The exchange of communications between the service provider and the CBIC helpdesk from 09.05.2017 till the date of filing of the ER-1 return reveal that the petitioner has been diligent in making efforts to open the portal and upload the forms. It is also pertinent to mention here that the tax payer has filed the subsequent ER-1 returns i.e. for May-17 and June-17 within due time.*

In spite of appreciating the efforts and due diligence demonstrated by appellants, the AA and FAA disallowed the TRAN credit arguing that, in the absence of any provisions under Sec. 140 of the Act or the rules made under or any Board's circulars issued that contained enabling clarifications/instructions for availing transitional credit in the event of such technical glitches, as encountered by the appellant in the instant case, the TRAN credit in the Table 5(a) of TRAN-1 appears to be irregular.

11.2 The legislative intent behind clause (ii) of Sec. 140 (1) of the Act is to prevent negligent tax payers, who completely abandon their statutory filing obligation for continuous period of six months prior to appointed date – from transitional credit. This is clearly not the case here. The appellant has demonstrated proper diligence. Prior to the due date for filing the ER-1 return for April 2017, the

appellant encountered severe systemic and technical glitches/blockages. The appellant promptly took proactive steps by raising official helpdesk tickets and submitted a formal written intimation to the Superintendent of Central Tax. These facts are conceded by the department as discussed in above paras.

11.3 As age-old maxim meaning that "law compels no one to do vain or impossible i.e. which can't be possibly performed". Where the law creates a duty or charge and the party is disabled to perform it, without any default in him and has no remedy over it, there the law would in general excuse him. In case of Indian Seamless Steel and Alloys Ltd vs. UOI 2003 (156) ELT 945 (Bom), it was held that;

> *"It is well settled principle of law that law does not compel a man to do that which he can't possibly do and the said principle is well expressed in legal maxim "lex non cogit ad impossibilia" which is squarely attracted to facts and circumstances of the case".*

In the present case, the appellant is prevented from doing the required Act by circumstances beyond his control and he diligently pursued the matter and completed the required act at the first subsequent opportunity. Hence penalising him for glitches beyond his control appears to be unfair. In these circumstances, the stand taken by the department that in the absence of enabling clarifications for availing transitional credit in the event of technical glitches, availing the same is irregular, appears to be harsh. The technical glitch/blockage caused by the government's own portal can't be weaponised to trigger an outright disallowance of vested transitional credit. Further we are of the opinion that when substantial compliance was done though belatedly, but at first given opportunity, the

respondent's insistence on an absolute, literal timeline is misdirected and ought to be rejected.

11.4 The four judicial decisions relied upon by the Learned FAA appears to be inapplicable to the facts of present case. Those decisions pertain to issue of ITC under Sec. 16 of the Act, FEMA etc. In those cases, the eligibility of the benefit of transitional credit transfer from existing law to GST regime was not discussed, especially in circumstances of unforeseen technical glitches.

11.5 In case of Johnson Matthey Chemicals India Pvt Ltd Vs UOI (2025) 32 CENTAX 353 (BOM) dated 8.7.2025, Bombay High Court dealt with similar transitional challenges and reinforced that substantive vested rights to credit can't be extinguished by procedural timelines when a tax payer is prevented from compliance due to bonafide systemic constraints. Hon'ble Madras High Court in case of Sowmiya Spinners private limited vs Deputy Commissioner of GST & CEX (2024) 23 CENTAX 58 (MAD) dated 29.8.2024 has observed that;

> …….
>
> *Para 15: As far as the procedural irregularity committed by the petitioner in following the procedures under Section 140 of the Central Goods and Services Tax (CGST) Act, 2017 is concerned, the same has to be condoned as the procedures cannot come in the legitimate way of grant of Input Tax Credit.*
>
> *Para 16: In this connection, the decision of the Hon'ble Supreme Court in State of Uttar Pradesh v. Aurya Chambers of Commerce, 1986 (25) E.L.T. 687 (SC), is relevant wherein, the Hon'ble Supreme Court has held that procedures are handmaids of justice and not mistress of law.*

Para 17: In this case, at best the petitioner can be found fault for not filing the returns in time before attempting to transition the credit on 22.12.2017 post facto. The petitioner has however filed the returns on 29.12.2018. Thus, the lacunae if any stands cured/complied. ... ...

In this case the Hon'ble Madras High Court has clearly held that though the assessee found to be at fault for not filing returns in time before attempting to transition credit post facto, the assessee filed the required returns later, which had cured impugned lacunae. These findings are similar to the circumstances of case under appeal and merits consideration.

12. Coming to the issue of invoking Sec. 74 for denying the transitional credit availed, the appellant has stated that;

i) Sec. 74 can only be invoked where tax is not paid, short paid or input tax credit is wrongly availed by reason of fraud, wilful misstatement or suppression of facts of the case.

ii) When they are unable to file April 2017 ER-1 return, they raised the complaint with Help Desk of ACES portal and that fact was immediately conveyed to Range authorities vide their letter dated 12.5.2017, which was duly acknowledged by department.

iii) No action was taken by department to sort out the matter and get ER-1 filed on physical basis. The several attempts made by them to file concerned return and documentary evidence showing their efforts were acknowledgment by Hon. AA and Hon. FAA in their respective orders. Hence none of the ingredients required to invoke Sec. 74(1) of the Act are not present in any manner.

iv) Having accepted the duty payment of excise duty for the month of April 2017, the CENVAT credit shown in opening balance, CENVAT credit taken/utilised and CENVAT credit balance which is the opening balance for May 2017, under erstwhile regime, was never in dispute.

v) Hence the averments of Hon FAA in the impugned order that by knowingly taking Transitional credit illegally, an element of wilfulness is perceived is not justified and arbitrary.

13.0 As seen from records, though SCN invoked Section 74(1), no grounds or foundation facts of fraud, suppression or wilful misstatement were set out, which are necessary for invoking Section 74. There is inherent contradiction of invoking Sec.74(1) and Sec.122(2)(a) together in SCN as discussed in para 10.4 (supra). The intimation about inability to file April, 2017 ER-1 return in May, 2017 to Department by appellant along with other documentary details, clearly go against the allegations of wilful misstatement / suppression by the Department. Mere stating or mechanical use of words 'fraud, wilful misstatement or suppression of facts' for invoking Section 74(1) provision, without foundational facts / discussion to validate such allegations, indicates clear non-application of mind. The contention that suppression can't be alleged when the facts are within the knowledge of the Department, as is the case in the present appeal holds good. These precedents were enunciated in following judicial precedents:

(i) Tata Steel Ltd V. UOI, Hon'ble Supreme Court in SLP (c) No. 16859 of 2026, dated 25.08.2026.

(ii) M/s G.R. Infra Projects Ltd Vs. State of M.P., Civil appeal No. 11277 of 2026 dated 19.08.2026.

13.1 The respondents have stated that, despite knowing that they didn't furnish all returns required under existing law for the period of six months immediately preceding the appointed date, thereby an element of wilfulness is perceived, ignoring the fact that the circumstances under which the appellant could not file was intimated to Department and the same was acknowledged by the Department. The Respondent has not specifically identified any specific fact or information which the appellant was required to declare and did not disclose, or any information called for in writing by the proper officer which the appellant failed to furnish, except coming to conclusion that "an element of wilfulness is perceived.

13.2 Pursuant to the directions of Hon'ble SC in the case of Northern Operating Systems Private Limited (NOS) in Civil Appeal No. 2289-2293 of 2021, an instruction bearing No. 05/2023-GST was issued by CBIC on 13.12.2023. It was clarified that Sec. 74(1) may be invoked only in the cases where the investigations indicates that there is material evidence of fraud or wilful mis-statement or suppression of fact to evade tax on the part of the tax-payer, provisions of Sec. 74(1) of the Act, for issuance of SCN, and such evidence should also be made a part of the SCN. Although the instruction was issued after the period of dispute, it is consistent with the plain reading of the statutory provision that we have adopted. Wilfulness to evade tax or to claim ineligible credit benefit cannot be equated with mere failure to file a single return due to circumstances beyond the control of Tax-payer, more so when all facts are notified to the Department. The wordings of Sec. 74(1) of the Act clearly

indicates that there must be a deliberate intention on the part of taxpayer to take ineligible transitional credit.

14.0 In the light of above factual position, we find that the elements of fraud, wilful misstatement or suppression of facts to take ineligible transitional credit, have not been established against the appellants. No mens rea can be attributed to the respondents for taking the transitional credit, for the lacunae of belated filing of one ER-1 return.

Conclusions and orders.

15.0 From the facts narrated and discussions in above paras, we are of the opinion that:

(i) Both the OIO and OIA (impugned order) travelled beyond the specific proposals with regard to leviability of penalty in SCN, i.e. penalty were imposed under Section 74 read with Section 122 (2)(b) of the Act as against Section 122 (2)(a) proposed in SCN (para 10 above)

(ii) with regard to eligibility of transitional credit, when substantive compliance was done though belatedly, but at first given opportunity in spite of the fact that technical glitches are beyond their control, the same needs to be allowed and respondent's insistence on absolute, literal timelines is misdirected and out to be rejected (para 11 above).

(iii) As discussed in paragraphs 13 & 14 above, the elements of fraud, wilful misstatement or suppression of facts to take

ineligible transitional credit, have not been established against the appellants.

16.0 In the result, we come to conclusion, on the basis of aforesaid reasoning, that the impugned order passed by the First Appellate Authority, can't be sustained and accordingly set aside with consequential relief to the appellants.

17.0 The issues framed in paragraph 9.0 above are answered accordingly.

18.0 No order to cost.

(pronounced in open court on 30.10.2026)

(A P Ravi)
Judicial Member

(Duvvuri Krishna Srinivas)
Technical Member

Dated: 30.10.2026