APHC010156572024

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3529]**
(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 3659/2025

Between:

1. M/S. TRIMEX SANDS PRIVATE LIMITED, VATCHAVALASA (V), GARA MANDAL, SRIKAKULAM, ANDHRA PRADESH, REP. BY ITS AUTHORIZED REPRESENTATIVE, SRI. VINAY KUMAR N. S/O. RAJU N. AGED ABOUT 38 YEARS.

...PETITIONER

AND

1. THE UNION OF INDIA, REP. BY ITS SECRETARY, MINISTRY OF FINANCE, NEW DELHI -110001.
2. THE STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY REVENUE (CT) DEPARTMENT, VELAGAPUDI, AMARAVATHI, GUNTUR DISTRICT.
3. THE DEPUTY COMMISSIONER OF CENTRAL TAXES, VIZIANAGARAM CENTRAL GST DIVISION, VIZIANAGARAM - 535003 ANDHRA PRADESH.
4. THE ASSISTANT COMMISSIONER, CENTRAL TAX, CENTRAL EXCISE AND SERVICE TAX, VIZIANAGARAM CGST DIVISION, VISAKHAPATNAM CGST COMMISSIONERATE, NEAR DANDUMARAMMA TEMPLE, CANTONMENT AREA, VIZIANAGARAM - 535 003.
5. THE SUPERINTENDENT CENTRAL TAX, WEST CGST RANGE,

MAHALAKSHMI NAGAR, SRIKAKULAM-532001

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased topleased to issue an appropriate writ, order or direction particularly in the nature of Writ of MANDAMUS declaring the action of the 3rd Respondent Deputy Commissioner of Central Tax, Vizianagaram, Central Division in passing the impugned order dated 31-08-2023 in DIN No. 20230855YJ0000999FB6 levying ' tax, penalty and interest under section 74 read with section 50 of the CGST Act, claiming Tran-1 credit treating as willful mistake and without establishing 'mens rea' as illegal, arbitrary, unjust, improper, unfair, irrational, unreasonable, violation of the principles of natural justice and contrary to judgement of various High Courts and contrary to explanation II of section 74 of CGST Act and violation of article 14, 19(1)(g), 21 and 265 of the Constitution of India and consequently to set aside the same and direct the respondents to refund the payment of tax of Rs. 34,82,160/- and pass

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to condone the delay of 309 days in representing the writ petition, the Petitioner would suffer severe loss and hardship.

IA NO: 2 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of penalty and interest pending disposal of the writ petition else the petitioner would be put to serious loss and hardship and grant

IA NO: 3 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased Pleased to permit the Petitioner to implead the proposed 6th Respondent as Respondent No. 6 in the writ petition or else the Petitioner would be put to severe loss and hardship and pass.

Counsel for the Petitioner:

1. M V J K KUMAR

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX
2. Y N VIVEKANANDA
3. ....

The Court made the following Order: *(per Hon'ble Sri Justice R. Raghunandan Rao)*

The petitioner, who is involved in manufacturing of various items, had been registered, under the V.A.T. Act, Central Excise Act and Service Tax Regime. The petitioner had a credit balance, under the CENVAT Credit Rules, as of 30.06.2017.

2. The G.S.T. regime was introduced in the country with effect from 01.07.2017. On account of the introduction of the new tax regime, a transition had to take place from the old taxation acts to the G.S.T. regime. This transition, was regulated by Section 140 of the C.G.S.T. Act and the corresponding provisions of the State G.S.T.. Under this provision, a tax payer, who had tax credit to his account, under various Acts, was entitled to transition the tax credit to the G.S.T. regime.

3. The petitioner, also transitioned to the G.S.T. Tax regime, by claiming an amount of Rs.1,53,74,493/- to be the credit available to him. This claim of the petitioner was initially accepted and the petitioner was given a tax credit of Rs.1,53,74,493/-, in the electronic ledger of the petitioner. This tax credit was also utilized by the petitioner, for clearing the liabilities of the petitioner, under the G.S.T. regime.

4. The accounts of the petitioner were audited, by the respondent authorities, in the year, 2018. At that stage, the Superintendent of Central Tax, Srikakulam, who is the 5th respondent herein was sent E-Mails, dated 10.04.2018 & 25.04.2018, pointing that the petitioner had claimed an excess

credit of Rs.34,82,160/-, and the same would have to be reversed. The petitioner filed a reply to these E-Mails, on 09.07.2018, contending that, the petitioner had not availed any excess credit. The petitioner also contended that, a sum of Rs.34,82,160/-, said to be an excess availment, was infact credit which the petitioner was unable to take on account of Rule 6(3)(ii) of the CENVAT Credit Rules, 2004. It is also contended that this credit entitlement was also intimated to the Excise Department also.

5. It was the case of the petitioner that, under the CENVAT Credit Rules, 2004, the petitioner, who was in the manufacture of taxable goods as well as exempted products, was required to deposit certain amounts, on a monthly basis, as per Rule 6 (3)(A)(a) of the CENVAT Credit Rules, 2004. Thereafter, the petitioner, at the end of the year, was entitled to either claim the excess CENVAT Credit available to the petitioner, on account of the monthly payments as opposed to actual tax liability, for the entire year or to pay the deficit amount. The petitioner, would also contend that, by virtue of such exercise, the petitioner was entitled to a CENVAT credit of Rs.34,82,160/- and the same had been claimed, along with the CENVAT credit of Rs.1,18,92,333/-, which had been disclosed in the returns, filed for January, 2017.

6. A show-cause notice, dated 21.02.2019, was issued by the 3rd respondent to the petitioner, after considering the reply, on 18.09.2018. The petitioner, after availing a personal hearing, where the aforesaid objections

were reiterated, the submissions were accepted and an adjudication order, dated 31.08.2023, came to be passed, determining that, an amount of Rs.34,82,160/-, CENVAT credit amount claimed by the petitioner, was not available and required to be reversed. Apart from this, the Adjudicating Authority, also took the view that, there was a wilful misstatement and suppression of facts as to the availability of CENVAT Credit as of 30.06.2017. As such, the petitioner would be liable for penalty as per Section 74, along with interest, under Section 50(3) of the C.G.S.T. Act.

7. Aggrieved by the said decision, dated 31.08.2023, the petitioner has approached this Court, by way of the present Writ Petition.

8. Heard Sri M. V. J. K. Kumar, the learned counsel appearing for the petitioner and Sri Y. N. Vivekananda, the learned Standing Counsel appearing for the respondents.

9. Sri M. V. J. K. Kumar, the learned counsel appearing for the petitioner, would contend that, the Adjudicating Authority does not dispute the fact that, the petitioner was entitled to additional CENVAT credit of Rs.34,82,160/-, who held that, the said credit should have been obtained by the petitioner, under the CENVAT Credit Rules, and the same could not have been claimed directly by the petitioner, under the G.S.T. regime itself. The learned counsel for the petitioner, would also contend that, such a view would be incorrect in as much as the scheme of the G.S.T. Act as well as the transitional provisions as to ensure that every tax payer is given the benefit of transition of the tax credits

that the tax payer had been obtained, under the earlier tax regimes. The learned counsel would also rely upon a judgment of the Hon'ble High Court of Madras in the case of ***Commissioner of G.S.T. and Central Excise & Ors. Vs. Bharat Electronics Limited***[1] as well as the judgment of the Hon'ble High Court of Jharkhand at Ranchi in the case of ***Usha Martin Limited Vs. Additional Commissioner, Central GST and Excise, Jamshedpur & Ors.***[2] and the subsequent judgment of the Hon'ble High Court of Jharkhand in the case of ***Steel Authority of India Ltd. Vs. State of Jharkhand***[3]

10. Sri Y. N. Vivekananda, the learned Standing Counsel appearing for the respondents, would contend that, the impugned order does not contain any finding or statement that the petitioner was eligible for additional CENVAT Credit of Rs.34,82,160/-. He would further contend that, the impugned order, does not suffer from any infirmity as the additional CENVAT Credit, would have to be first cleared or granted by the Authorities, under the CENVAT Credit Rules and not the Authorities, under the G.S.T. Act. He would also contend that, the petitioner cannot make a claim for additional CENVAT Credit, directly, under the G.S.T. Act when such claim can be adjudicated by the Authority, under the CENVAT Credit Rules.

[1] (2022) 90 GST 648 (Madras)
[2] 2023 [68] G.S.T.L. 338
[3] [2025] 172 taxmann.com 105 (Jharkhand)

11. **Consideration of the Court:**

The admitted facts in the present case are that the CENVAT Credit available to the petitioner, in the CENVAT Credit Register, was Rs.1,18,92,333/-. The petitioner had transitioned an amount of Rs.1,53,74,493/- into the G.S.T. regime. The case of the petitioner is that, the differential amount of Rs.34,82,160/-, was also available to the petitioner for transition into the G.S.T. regime. This claim is, on the ground that, the petitioner was entitled to additional CENVAT Credit of Rs.34,82,160/-, on account of the excess reversed CENVAT Credit, under Rule 6(3)(A) of the CENVAT Credit Rules, 2004, which was available only after the end of June, 2017.

12. This is resisted by the Revenue, on the ground that, Section 140 of the G.S.T. Act, permits only transition of such credit which is available, in the CENVAT records, as per the returns filed for June, 2017.

13. The relevant parts of Sub-Sections of Section 140 of the G.S.T. Act are given below:

> *"140. Transitional arrangements for input tax credit.-*
>
> *(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit 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 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.

4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994 (32 of 1994), but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,-

(a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and

(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, within such time and in such manner as may be prescribed], subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section."

14. A reading of these provisions does not make out a case for permitting transition of CENVAT Credit, which was not granted, under the CENVAT Credit Rules.

15. It may also be noted that the 3rd respondent, in the impugned order, dated 31.08.2023, had not disputed the entitlement of the petitioner to the additional CENVAT Credit of Rs.34,82,160/-. However, the 3rd respondent, held that, such credit was permissible only, if such credit had been granted, under the earlier tax regime, and such credit cannot be accepted by the Authorities, under the G.S.T. regime.

16. Sri M. V. J. K. Kumar, the learned counsel appearing for the petitioner, would further contend that, such a view is not permissible, especially, in view of the judgments of the Hon'ble High Court of Madras as well as the Hon'ble High Court of Jharkhand. In the case of **Commissioner of G.S.T. and Central Excise & Ors. Vs. Bharat Electronics Limited**, the issue that arose, before the Hon'ble High Court of Madras, is whether the petitioner therein was bound by an erroneous entry, made in Form TRAN-1, and whether such an erroneous entry could be corrected subsequently. Revenue in that case, had contended that, only one correction was permissible and the second correction was not permissible due to which the petitioner therein was not entitled to rectify the erroneous entry, relating to the credit that was transitioned. After discussing the scheme of the Act and the transitional provisions, the Hon'ble High Court of Madras, had held that, such a restriction

would be clearly arbitrary and not in the interest of General Principles of Law, and had held that, the petitioner should be entitled to file a revised Form, by reopening the portal, for such purposes.

17. In the case of **Usha Martin Limited Vs. Additional Commissioner, Central GST and Excise, Jamshedpur & Ors**, the Hon'ble High Court of Jharkhand, was considering the question of whether the Authorities, while looking at the transition of credit could go into the question of whether the credit sought to be transitioned from the earlier tax regime was admissible, under the earlier taxation laws. The Hon'ble High Court, had held that, the parties, under the G.S.T. Act, were not entitled to look into the entitlement or liability of the tax payer for claiming credit, under the earlier taxation laws. This principle was reiterated by another Division Bench of Jharkhand in the case of **Steel Authority of India Ltd. Vs. State of Jharkhand**.

18. Both these judgments would only aid the 3rd respondent, in his view, that the said transitional credit claimed by the petitioner was not admissible, under the G.S.T. Act in as much as the said credit should have first been recorded, under the CENVAT Credit Rules itself. We are also in agreement with this view of the 3rd respondent.

19. Another aspect of the matter is the question of whether Section 74 of the G.S.T. Act, would apply to the present case. The view of the 3rd respondent was that wrong availment of transitional credit came to light only, after an audit was conducted. Such a wrong availment of transitional credit is

treated as wilful misstatement or suppression of fact, which would attract Section 74 of the G.S.T. Act. We are not inclined to accept this finding. It is clear that the petitioner, had, openly acknowledged the fact that, the additional credit claimed by the petitioner arose, on account of the requirement of the CENVAT Credit Rules of 2004 to account for such additional credit only, at the end of the year. Further, the petitioner had reversed the input tax credit immediately, after it became apparent that the Authorities were not willing to accept such transitional credit, being claimed by the petitioner.

20. The claim of the petitioner is at best an erroneous claim and cannot be treated as a deliberate claim made to obtain undue benefit by a suppression of fact or a wilful misstatement of fact.

21. In the premises, the impugned order is upheld, subject to the modification that the penalty sought to levy against the petitioner, under Section 74 of the G.S.T. Act, is set aside.

22. It may also be clarified that, it would be open to the petitioner to obtain CENVAT credit, under the CENVAT Credit Rules, 2004, and thereafter, seek transition of the said credit to the G.S.T. regime or for payment of the said CENVAT credit in cash from the appropriate Authorities.

23. Accordingly, this Writ Petition is allowed. There shall be no order as to costs.

As a sequel, interlocutory applications pending, if any shall stand closed.

R. RAGHUNANDAN RAO, J

T. C. D. SEKHAR, J

Date:28.04.2026
KPV

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THE HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

AND

THE HON'BLE SRI JUSTICE T.C.D. SEKHAR

WRIT PETITION No:3659 of 2025

(per Hon'ble Sri Justice R. Raghunandan Rao)

28.04.2026

KPV