IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10th DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

WRIT PETITION NO.1913 OF 2026 (T-RES)

BETWEEN:

M/S. SHAKTI ENTERPRISES
PLOT NO.14,
ATTIBELE INDUSTRIAL AREA,
ATTIBELE BENGALURU - 562 107.
REPRESENTED BY ITS PROPRIETOR
MR. SUBRAMANYA BAGILTHAYA,
AGED 70 YEARS,
RESIDING AT NO.18,
'SHUBHA' 12TH CROSS, 1ST STAGE,
INDIRANAGAR, BENGALURU - 560 038.

...PETITIONER

(BY SRI. PRASHANTH S.,ADVOCATE)

AND:

THE PRINCIPAL COMMISSIONER OF CENTRAL TAX,
GST COMMISSIONERATE,
VINAYA MARGA, SIDDHARTHA NAGAR
MYSORE – 570 011.

...RESPONDENT

(BY SRI. SHISHIRA AMARNATH.,ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER, OR DIRECTION QUASHING THE SETTING ASIDE THE IMPUGNED ORDER DEFECT MISC ORDER No. DEFECT MO/ST/150/2025-CR DATED 12.12.2025 AT ANNEXURE-A PASSED BY THE HONBLE CESTAT, INSOFAR AS IT HOLDS THAT REVERSAL OF TRANSITIONED INPUT TAX CREDIT THROUGH GSTR-3B DOES NOT CONSTITUTE VALID COMPLIANCE WITH THE STATUTORY PRE-DEPOSIT REQUIREMENT AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.07.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV ORDER

(PER: HON'BLE DR. JUSTICE K.MANMADHA RAO)

The petitioner has approached this Court challenging the Interim Order Defect Misc. Order No. Defect MO/ST/150/2025-[CR] dated 12.12.2025 passed by the Customs, Excise and Service Tax Appellate Tribunal, Bengaluru (hereinafter referred to as “the Tribunal”), whereby the Tribunal has declined to accept the pre-deposit of Rs.79,77,301/- made by the petitioner by debiting the Electronic Credit Ledger through Form GSTR-3B as valid compliance of Section 35F of the Central Excise Act, 1944, as made applicable to service tax matters by Section 83 of the Finance Act, 1994.

2. The short question that arises for consideration is whether the mandatory pre-deposit required under Section 35F of the Central Excise Act, 1944, can be discharged by

utilisation of CENVAT credit transitioned into the Goods and Services Tax regime under Section 140 of the Central Goods and Services Tax Act, 2017, and reflected in the Electronic Credit Ledger.

3. The petitioner is a proprietorship concern engaged in sorting, blending, processing and packing of tea for M/s Hindustan Unilever Limited. Under the erstwhile service tax regime, the petitioner had availed CENVAT credit on packing materials in accordance with the CENVAT Credit Rules, 2004.

4. Upon introduction of the Goods and Services Tax regime with effect from 01.07.2017, the petitioner, in compliance with Section 140 of the CGST Act, 2017, transitioned the unutilised CENVAT credit by filing Form GST TRAN-1. The transitioned credit was accepted by the Department and stood reflected in the Electronic Credit Ledger.

5. Pursuant to investigation, a Show Cause Notice was issued alleging irregular availment of CENVAT credit

and suppression of taxable value. By Order-in-Original No. 04/2023-24 dated 27.12.2023, the Principal Commissioner confirmed the demands. Aggrieved thereby, the petitioner preferred an appeal before the Tribunal and made the mandatory pre-deposit of Rs.79,77,301/- by debiting the Electronic Credit Ledger through Form GSTR-3B.

6. The Registry of the Tribunal raised an objection to the mode of payment. By the impugned order dated 12.12.2025, the Tribunal upheld the objection, primarily relying upon the CBIC Instruction F.No. CBIC-240137/14/2022-Service Tax Section-CBEC dated 28.10.2022, and held that pre-deposit in legacy matters must be made only through cash payment on the designated CBIC portal. The Tribunal, however, granted four weeks' time to the petitioner to make the deposit in the prescribed manner.

7. Learned counsel for the petitioner submitted that under the pre-GST regime, utilisation of CENVAT credit for making pre-deposit was expressly permitted by CESTAT Circular No. 15/CESTAT/General/2013-14 dated

28.08.2014 and affirmed by the Gujarat High Court in ***Cadila Healthcare Pvt. Ltd. v. Union of India, 2018 (18) G.S.T.L. 30 (Guj.).*** It was further submitted that Section 140 of the CGST Act was enacted to protect the vested right in the accumulated credit and that the transition did not alter the character of the credit.

8. Reliance was placed on the judgment of the Gujarat High Court in ***Yasho Industries Ltd. v. Union of India, (2024) 24 Centax 338 (Guj.),*** affirmed by the Supreme Court in ***Union of India v. Yasho Industries Ltd., (2025) 30 Centax 352 (S.C.),*** holding that pre-deposit can be made by debiting the Electronic Credit Ledger. Particular reliance was placed on the judgment of the Delhi High Court in ***M/s Army Welfare Housing Organisation v. Union of India (W.P.(C) No. 13260/2024),*** wherein it was held that transitioned CENVAT credit constitutes a legitimate source for discharging the pre-deposit under Section 35F.

9. It was contended that the CBIC Instruction dated 28.10.2022 is merely administrative in nature, does not

prohibit utilisation of credit, and cannot override the statutory provisions or curtail a vested right.

10. Learned counsel for the respondents supported the impugned order and submitted that the CBIC Instruction dated 28.10.2022, issued pursuant to the observations of the Bombay High Court in ***Sodexo India Services Pvt. Ltd. v. Union of India, 2022 (66) G.S.T.L. 257 (Bom.)***, mandates cash payment through the designated portal for legacy disputes. It was argued that the Electronic Credit Ledger can be utilised only for payment of output tax under Section 49(4) of the CGST Act and that pre-deposit does not fall within the said category. Reliance was placed on various decisions of the Tribunal following the said Instruction.

11. Section 35F of the Central Excise Act, 1944, as made applicable to service tax matters by virtue of section 83 of the Finance Act,1994, requires the appellant to deposit a prescribed percentage of the duty or penalty as a condition for entertaining the appeal. The provision does not prescribe any exclusive mode of payment. It neither

mandates payment in cash nor prohibits utilisation of available credit. Bare text of which is reproduced below:

> *"Section 35F of the Central Excise Act, 1944*
>
> *"Section 35F. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.-*
> *The tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal-*
>
> *(i) under sub-section (1) of section 35, unless the appellant has deposited seven and a half per cent. Of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the Principal Commissioner of Central Excise or Commissioner of Central Excise;*
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> *(ii) against the decision or order referred to in clause(a) of subsection (1) of section 35B, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;*
>
> *(iii) against the decision or order referred to in clause (b) of subsection (1) of section 35B unless the appellant has deposited ten per cent, of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:*

Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014."

"Section 83 – Application of certain provisions of Act 1 of 1944:

"The provisions of the following sections of the Central Excise Act, 1944 (1 of 1944), as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise:-

[sub-section (2A) of section 5A] [sub-section (2) of section 9A], 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, [15A, 15B][31, 32, 32A TO 32P (both inclusive),] 33A, 34A, [35EE,] 35F][,35FF] to 35-O (both inclusive), 35Q, [35R,] 36, 36A, 36B, 37A, 37B, 37C, 37D [38A] and 40."

12. Under the pre-GST regime, the legal position was well settled that CENVAT credit could be utilised for making the mandatory pre-deposit. This was clarified by CESTAT Circular No. 15/CESTAT/General/2013-14 and affirmed by the Gujarat High Court in ***Cadila Healthcare (supra).*** The Supreme Court in ***Eicher Motors Ltd. v. Union of India, 1999 (106) E.L.T. 3 (S.C.)***, has held

that once credit is validly earned, it becomes a vested right which cannot be taken away except by express legislative provision.

13. Section 140 of the CGST Act, 2017, was enacted with the specific object of protecting the vested rights of taxpayers in the unutilised CENVAT credit. The transition of credit into the Electronic Credit Ledger did not create a new credit, it merely preserved the existing credit in a different form. The legislative intent was continuity and not extinguishment of the rights attached to such credit. The said relevant provision reads as under:

> *"140. Transitional arrangements for input tax credit.-*
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> *(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 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:-*
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> *(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."

14. In addition to this, Rule 142(3) of the CGST Rules further provides as under:

"142. Notice and order for demand of amounts payable under the Act.-xxXXX

(3) Where the person chargeable with tax makes payment of tax and interest under subsection (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice."

15. Hence, in terms of Section 140(1) of the CGST Act, the said CENVAT credit is thus available to any person for the purpose of paying any tax, interest or penalty by filing a form DRC-03. This is clear from Rule 142(3) of the CGST Rules. A conjoint reading of Section 140 of the CGST Act, read with Rule 142(3) of the CGST Rules would, in

effect, mean that CENVAT credit under the old regime could be transitioned into the new regime by all such persons who had such credit available in their ledger and the same could be utilised for the purpose of payment of any tax, interest or penalty under the new regime as well.

16. The judgment of the Gujarat High Court in ***Yasho Industries Ltd. (supra),*** affirmed by the Supreme Court, has settled the position that, in the absence of any statutory mandate requiring payment exclusively through the Electronic Cash Ledger, pre-deposit can validly be made by debiting the Electronic Credit Ledger. Although the said decision arose under the CGST Act, the underlying principle that the statute does not insist on cash payment is equally applicable.

17. The Delhi High Court in ***Army Welfare Housing Organisation (supra),*** has specifically examined the question of utilisation of transitioned CENVAT credit for pre-deposit under Section 35F in legacy matters and held that such credit constitutes a legitimate source. The facts and the legal issue in the present case are identical. The

ratio of the said decision applies with full force and it reads as under:

> *"25. These instructions, in effect, hold that filing of DRC-03 under the CGST regime is not a valid mode of payment for making a pre-deposit under Section 35(F) of the Excise Act, 1944, read with Section 83 of the Finance Act, 1994. These instructions were issued on 28th October, 2022 and in M/s Saphire Cables & Services Pvt. Ltd. & Ors., the appeals were filed prior to these instructions. Hence, according to Mr. Tyagi the same is distinguishable.*
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> *26. The short question for consideration-is whether CENVAT credit can now be utilised for the purpose of making pre-deposit or not. In the opinion of this Court, CENVAT credit has been recognised under Section 140 of the CGST Act for the purpose of transitioning to the electronic ledger. After the GST regime has been put in place, there is no rationale on the basis of which it can be held that DRC-03 payment cannot be utilized for the purpose of making pre-deposit.*
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> *27. Rule 142 of the CGST Rules is clear that payments can be made through DRC-03 of any tax, interest or penalty. Pre-deposit is nothing but an advance deposit of the demanded amount, which in this case would be tax, interest or penalty."*

18. The CBIC Instruction dated 28.10.2022 was issued to prescribe an administrative procedure for cash payments through a designated portal in the absence of the earlier ACES system. A careful reading of the

Instruction shows that it deals with the procedure for cash payments and does not contain any provision prohibiting utilisation of transitioned credit. An administrative instruction cannot curtail or override a mode of payment recognised under the statutory scheme and judicial precedents. Executive instructions cannot take away vested rights preserved by the legislature.

19. The Tribunal has proceeded primarily on the basis of the said Instruction without adequately examining the statutory scheme under Section 140 of the CGST Act or the binding judicial precedents permitting utilisation of transitioned credit. The reliance placed on decisions of the Tribunal following the Instruction cannot prevail over the statutory provisions and the judgments of the High Courts and the Supreme Court.

20. The pre-deposit is only a portion of the disputed demand and is intended to secure the interest of the Revenue during the pendency of the appeal. Once the amount is debited from the Electronic Credit Ledger and stands credited to the Government, the statutory

requirement stands satisfied. Denial of the right to utilise lawfully available transitioned credit would impose an unreasonable burden and effectively impair the statutory right of appeal.

21. In view of the foregoing discussion, this Court is of the considered opinion that the mandatory pre-deposit under Section 35F of the Central Excise Act, 1944, as applicable to service tax appeals, can validly be discharged by utilisation of CENVAT credit transitioned under Section 140 of the CGST Act, 2017, and reflected in the Electronic Credit Ledger. The impugned order of the Tribunal rejecting the pre-deposit made by the petitioner is unsustainable in law.

ORDER

(i) The Writ Petition is ***allowed***.

(ii) The Defect Interim Order No. 150/2025 dated 12.12.2025 passed by the Customs, Excise and Service Tax Appellate Tribunal, Bengaluru, is hereby quashed and set aside.

(iii) It is declared that the pre-deposit of Rs.79,77,301/- made by the petitioner by debiting the Electronic Credit Ledger through Form GSTR-3B constitutes valid compliance of Section 35F of the Central Excise Act, 1944, as made applicable to service tax matters.

(iv) The Tribunal is directed to treat the said pre-deposit as valid and to entertain and adjudicate the appeal on merits in accordance with law.

No order as to costs.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(DR.K.MANMADHA RAO)
JUDGE

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