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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17th September, 2025

\+ **W.P.(C) 643/2024 & CM APPL. 2800/2024**

AIRPORTS AUTHORITY OF INDIA .....Petitioner

Through: Mr. Prakash Sinha & Mr. Ayush Kumar, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Arun Khatri, SSC with Ms. Anoushka Bhalla, Ms. Poonam Rani & Ms. Priyanka, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M Singh, J.

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, challenging the impugned adjudication order dated 21st August, 2023 (hereinafter, *'impugned order'*) by which the CENVAT Credit to the tune of Rs.9.34 crores claimed by the Petitioner-Airport Authority of India (hereinafter, *'AAI'*) has been rejected.

3. The case of the AAI is that it is running airports in India across the country. The present dispute relates to the period April to June, 2017 wherein the Petitioner wanted to avail of credit amounting to Rs.17,40,24,033/-. Since the said quarter relates to the period just before the Goods and Service Tax (hereinafter, *'GST'*) regime came into effect, the Petitioner had earlier filed ST-3 Return in which it had claimed Rs. 8,06,12,708/- as the CENVAT

Credit. However, by the time it wanted to amend the said return, the case of the AAI is that the portal was not permitting the same, as the GST regime had already set in.

4. The submission of Mr. Prakash Sinha, ld. Counsel for the Petitioner is that the TRAN-1 Form was however filed praying for allowing of the CENVAT Credit for the total amount of approximately Rs.17.40 crores. However, in respect of the same, the Adjudicating Authority took the position that since the same was not reflected in the ST-3 Return, the credit could not be given to the Petitioner. The relevant portion of the said order reads as under:

> *"4.3.3 In view of above, I find that in terms of section 140, a registered person, other than composition taxpayer is entitled to take CENVAT credit of eligible duties and taxes carried forward in the return furnished under existing law relating to the period ending with the day immediately preceding the appointed day. The said amount of credit is subject to condition that it should be admissible as input tax credit under GST law and person should have furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date. As per provision of the CGST Act, the said amount of credit should not relate to goods manufactured and cleared under exemption notifications. Further, in term of 140(4) (a), a registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994, but which are liable to tax under the CGST Act, is also entitled to take carry forward CENVAT credit in return of existing law. Section 140(8) of the CGST Act states that a registered person having centralized registration under the existing Law (Finance Act, 1994) and has*

obtained a registration under the CGST Act, shall be allowed to take (avail), in his electronic credit ledger, credit of the amount of CENVAT Credit carried forward in the returns, furnished under the existing law (ST-3 Returns) in respect of the period ending with the day immediately preceding the appointed day (April- June 2017) in such manner as may be prescribed. First Proviso states that if the last period's Returns under existing law is filed within three months of the appointed day, the credit as reflected in the original/revised Return shall be allowed. The assessee filed the ST-3 Returns for April-June 2017 using this extended time period provided. Second Proviso states that the credit shall not be allowed unless it is eligible as an Input Tax Credit under GST. Further, third Proviso to Section 140(8) of the CGST Act states that such credit may be transferred to any of the registered persons having the same PAN for which centralized registration was obtained under the existing law. ***<u>Therefore, I find that mere fling declaration in FORM GST TRAN-1 is not sufficient to claim transitional credit and all other conditions including filing of returns under existing law, reflection of the amount of CENVAT credit of eligible duties carried forward in the ST-3 return, eligibility of same credit under GST law, supporting documents, invoices and evidences are also required to claim the such credit.</u>*** *Credit is not a vested right but it is in nature of benefit or concession subject to terms and conditions thereof .Further, in terms of sub-rule (3) of rule 117, the amount of credit specified in the application in FORM GST TRAN-1 is credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the common portal. Further, in terms of rule 121 of the CGST Rules,2017 the amount credited under sub-rule (3) of rule 117 may be verified and proceedings under section 73 or, as the case may be, section 74 shall be initiated in respect of any credit wrongly availed, whether wholly or partly. Further, I also find that*

amount of CENVAT Credit Rs. 9,34,11,324/- is nowhere reflected in ST-3 returns flied/revised by the Noticee and further, there is no transitional provisions which allow the such credit without claiming the same under ST-3 returns. This CENVAT Credit amount is nowhere covered under the provision of section 140 of the CGST Act. ***Therefore, the amount of Rs. 9,34,11,324/- claimed in TRAN-1 is clearly in violation of statutory requirement of sub-section (1) and (8) of the section 140 of the CGST Act,2017. Therefore, the claim of Rs.9,34,11,324/- is nowhere covered under section 140, thus the said Transitional credit is ineligible and required to be recovered as Central Tax under section 73 of the CGST Act, 2017 along with applicable interest under section 50 and penalty under CGST Act, 2017.***"

5. It is, thus, prayed by ld. Counsel for the Petitioner that since it was only a software glitch due to which the ST-3 Return could not be filed, the benefit ought to be extended to the Petitioner.

6. The stand of the Petitioner is that in its letter dated 23rd January, 2018, it is clearly admitted by the Petitioner that it had not claimed transitional credit in respect of Rs.9,34,11,325/-. The same should have been considered by the Original Adjudicating Authority.

7. Reliance is placed upon the decision of the Supreme Court in ***Central Board of Indirect Taxes and Customs v. Aberdare Technologies Private Limited and Ors., 2025 SCC OnLine SC 1323*** wherein the Supreme Court has held that software limitations would not be a good justification for not extending benefits. Paragraph 3 of the said judgment is set out below:

> *"3. The petitioner, Central Board of Indirect Taxes and Customs, must re-examine the provisions/timelines fixed for correcting the bonafide*

errors. Time lines should be realist as lapse/defect invariably is realized when input tax credit is denied to the purchaser when benefit of tax paid is denied. Purchaser is not at fault, having paid the tax amount. He suffers because he is denied benefit of tax paid by him. Consequently, he has to make double payment. Human errors and mistakes are normal, and errors are also made by the Revenue. Right to correct mistakes in the nature of clerical or arithmetical error is a right that flows from right to do business and should not be denied unless there is a good justification and reason to deny benefit of correction. Software limitation itself cannot be a good justification, as software are meant ease compliance and can be configured. Therefore, we exercise our discretion and dismiss the special leave petition."

8. On the other hand, Mr. Khatri, ld. SSC appearing for the Department submits that the Department had in fact looked at the TRAN-1 which was filed by the Petitioner. In respect of the same, various documents and clarifications were sought. The same were not submitted and hence, the said credit has been rejected. The following paragraphs of the counter affidavit are relied upon:

"8. Whereas, for verification of the legitimacy. of the transitional credit availed by the Petitioner, they were called to furnish the relevant documents information. The Petitioner replied vide letter dated 16.12.2021 (Annexure-P9) that all documents have been submitted by them earlier multiple times and no discrepancy has been noticed and requested to drop the proceedings. However, since an excess amount of Rs 9,34,11,325/- was found to be carried forward by the Petitioner which is not reflecting in ST-3 Return and invoices/payment details for the balance Rs 8,06,12,708/- was not submitted by the

Petitioner, a letter for consultation prior to issuance of SCN was sent vide letter dated 03.02.2022 giving them an opportunity to join the investigations latest by 09.02.2022.

9. The Petitioner appeared for pre-SCN consultation on 09.02.2022 and submitted their reply dated 09.02.2022. Regarding the Cenvat credit claimed in their return filed on 23.09.2017, they submitted a detailed statement of input invoices involved in that return. On being asked about the non-filing of return for Rs. 9,34,11,325/- they replied that they wanted to file revised ST-3 return but the ACES Portal did not allow to file the same as it was their second revised return. To verify the legitimacy of the Rs 8,06,12,708/- shown as balance in their last Service Tax return, an email dated 14.02.2022 was sent to the Petitioner requesting for the following documents/clarification of queries:-

i. Copy of invoices above Rs 25 lacs which was later raised to Rs. 50 lacs on the request of the notice due to the large volume of invoices.

ii. Payment proof of the above.

iii. Service Tax registration number of some of the invoices are missing.

iv. Clarification about some time-barred invoices.

10. The Petitioner submitted their reply to the said mail on 11/03/2022 but it was an incomplete reply and very few invoices were provided. Details were also not matching with their statement. In the absence of proper documentary evidence for verification, the validity of the claim of the transitional credit amount to Rs.14,40,24,033/- was unascertained, and hence the entire transitional credit availed by the Petitioner is inadmissible."

9. Mr. Khatri, ld. SSC has also pointed out that in the rejoinder filed by the Petitioner, the AAI does not deny that the documents were not submitted. In fact, it seeks to justify the non-furnishing of the documents in the following

manner:

> *"7.2 The contents of para no. 2.3 are denied. In this para, the Respondent has alleged that the Petitioner has not filed the service tax return and also not revised the same in proper manner and hence, Petitioner is responsible for not being able to utilise the transitional credit. In this regard, it is stated that the Respondent have grossly failed to consider the huge gamut of operations carried by the Petitioner at PAN India level. The Respondent have not appreciated that certain Service Tax invoices could not be settled due to unavoidable reasons as the data has to be compiled from 137 Airports, which includes 24 International Airports, 10 Customs Airports, 80 Domestic Airports and 23 Civil enclaves at Defense Airfields, hence the same could not be included in the original Service Tax return and then in the revised Service Tax return. When the Petitioner made the payment to the vendors, it then endeavored to file the revised service tax return again, however, the ACES portal did not allow to revise the service tax return as it was the second revision of the return. The Respondent have not appreciated that the month of April, May and June, 2017 were the most crucial months and the same fall under the transitional period between the substitution of the service tax regime to GST. Hence, the procedural lapses are bound to occur. The process of filing the updated service tax return could not be completed also for the reasons that as per rule 7B, the assessee can revise the return filed under Rule 7 within a period of 90 days from the date of submission of the original return. It is stated the vide Notification No.18/2017-ST, dated 22.6.2017 the time lines for filing the revised service tax return were reduced to 45 days from 90 days. The copy of said notification is already enclosed with the petition as Annexure-10. Hence due to this peculiar reason, the service tax return could not be filed in the due time capturing the entire figure of Rs. 17,40,24,033/-."*

10. Reliance is also placed upon the order of the Supreme Court in ***Union of India & Anr. v. Filco Trade Centre Private Limited & Anr. (2023) 1 SCC 562*** where glitches in the GST portal were recognized by the Supreme Court and relaxation of 90 days was given for filing claims of transitional credit.

11. The Court has considered the matter. A perusal of the impugned order and the pleadings would show that the ground of rejection are two fold:

i) That the ST-3 Return did not match with the credit which was being claimed; and

ii) Secondly, that the relevant documents were also not submitted by the Petitioner to support the credit claimed in TRAN-1.

12. Clearly, merely because of the dismantling of the earlier portal and shifting of the filing of returns to the GST portal is not the only reason that has been cited in the impugned order. From the pleadings it becomes clear that the documents to support the claim, to the extent of Rs.9.34 crores were not submitted by the Petitioner apart from filing a Chartered Accountant's certificate, etc. along with some documents. The rejoinder also makes it clear that the Petitioner did face some impediments in collecting the relevant documents. The impugned order is clearly an appealable order and there is no jurisdictional error or arbitrary exercise of power in the passing of the adjudication order which warrants interreference under writ jurisdiction. The Petitioner was always free to challenge the impugned order by way of an appeal under Section 107 of the Central Goods and Service Tax Act, 2017 (hereinafter, '*CGST Act*').

13. Under these circumstances, this Court is of the view that the Petitioner may be permitted to avail of its appellate remedy under the CGST Act in

respect of the impugned order dated 21st August, 2023.

14. The impugned order is dated 21st August, 2023 and the present writ petition was filed on 13th January, 2024. Since the matter has remained pending for some months before this Court, time till 15th November, 2025 is granted to the Petitioner to approach the Appellate Authority along with the requisite pre-deposit.

15. As part of the appeal, if the Petitioner has any further documents which would support its claim for claiming transitional credit of Rs.9.34 crores, it is permitted to file the same before the Appellate Authority. If the appeal is filed by the 15th November, 2025, the same shall not be dismissed on the ground of limitation and will be adjudicated on merits.

16. If the transitional credit is finally adjudicated in favour of the Petitioner, refund of the pre-deposit along with statutory interest shall be given to the Petitioner.

17. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

SEPTEMBER 17, 2025
Rahul/Ck