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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	21.01.2021
Pronounced On	02.06.2021

CORAM

THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P.No.27159 of 2018

MMD Heavy Machinery (India) Pvt. Ltd.,
Represented by Mr.C.Chandrasekar,
General Manager Finance & Company Secretary,
A-2, 7th Floor, Sakthi Tower, III,
New No.178/7F,
138, Anna Salai,
Chennai - 600 002.

...Petitioner

Vs

1. The Assistant Commissioner,
Office of the Commissioner of GST and Central Excise,
Chennai North Commissionerate,
R-40, A-1, 100 Feet Road,
Mogappair, Chennai - 600 037.
2. The Additional Commissioner of GST,
Officer of the Commissioner of GST and Central Excise,
Chennai North Commissionerate,
R-40, A-1, 100 Feet Road,
Mogappair, Chennai - 600 037.
3. The Assistant Commissioner of CT,
Anna Salai Assessment Circle,
No.621, Anna Salai, 'Sire Manson',
Chennai - 600 006.
4. The Assistant Commissioner of CT,
Egmore Assessment Circle,
Taluk Office Building, Spurtank Road,
Chetput, Chennai - 600 031.
5. The Assistant Commissioner,
Office of the Commissioner of
Central Tax Goods & Service Tax,
Sri City Range, Tirupati Division,
15-30/4, Padmavathi Nagar,
Mahila University Road,
Tirupati - 517 502.



6. The Chairman,
Goods and Services Tax Network (East Wing),
4th Floor, World Market,
New Delhi - 110 037.

(R6 suo-motu impleaded as per order of this Court
dated 08.01.2020 made in W.P.No.27159 of 2018)

7. The Assistant Commissioner (State Tax),
Ambattur Industrial Estate, Yadhaval Street,
Padi, Chennai.

... Respondents

(R7 suo-motu impleaded as per order of this Court
dated 08.01.2020 made in W.P.No.27159 of 2018)

Prayer: Writ Petition filed under Article 226 of the
Constitution of India to issue a Writ of Mandamus, to direct the
respondents to allow manual filing of FORM GST ITC-02 to
transfer the unutilized Input Tax Credit of Rs.2,86,19,907/- and
Rs.31,38,891/- from their Chennai registration GSTIN
33AAICM0791P1ZO to their Sri City, Andhra Pradesh registration
GSTIN 37AAICM0791P1ZS or alternatively direct the Respondent to
refund the amount of Input Tax Credit of Rs.2,86,19,907/- and
Rs.31,38,891/-.

For Petitioner : Mr. Joseph Prabakar

For Respondents :

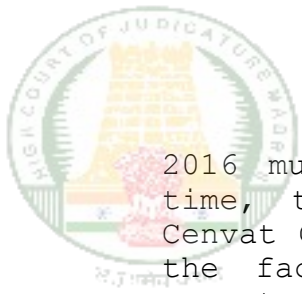
For R1, R2, R5 & R6 : Mr. A. P. Srinivas
Senior Standing Counsel

For R3, R4 & R7 : Mr. Mohammed Shaffiq
Special Government Pleader

ORDER

The present writ petition has been filed for a writ of
mandamus to allow the petitioner to file Form GST ITC-02 to
transfer the unutilized input tax credit of Rs.2,86,19,907/- and
Rs.31,38,891/- from their Chennai registration GS TIN
333AAICM0791PIZO to their Sri City, Andhra Pradesh GSTIN
37AAICM0791P1ZS or in the alternative to direct the respondent
to refund the amount of input tax credit of Rs.2,86,19,907/- and
Rs. 31,38, 891/-

2. By an order dated 08.01.2020, respondent Nos. 6 and 7
were suo-motu impleaded as necessary party by this Court. The
case of the petitioner in the present writ petition is that the
petitioner had shut down its factory in Ambattur, Chennai in
Tamil Nadu and shifted to Sri City, Andhra Pradesh during June



2016 much prior to implementation of GST. At that point of time, the petitioner had accumulated input tax credit under Cenvat Credit Rules, 2004 which had remained unutilized owing to the fact that the petitioner was pre-dominantly engaged in export of final products. Therefore, the petitioner orally requested the jurisdictional Assistant Commissioner of Central Excise (the 1st respondent) and the 2nd respondent to permit the transfer of accumulated input tax credit lying unutilized in its CENVAT Account to its new factory in Sri City, Andhra Pradesh in terms of Rule 10 of the CENVAT Credit Rules, 2004.

3. As per the petitioner, out of Rs.2,86,19,907/- a sum of Rs.2,77,10,052/- represented input tax credit lying unutilized on various inputs and a sum of Rs.9,09,855/- represented the input tax credit availed on various input services utilized by the petitioner for export of the finished goods under bond under Rule 19 of the Central Excise Rules, 2002.

4. According to the petitioner, the 1st and the 2nd respondents had orally indicated to the petitioner that the petitioner should first close all the pending disputes and then apply for transfer of credit under Rule 10 of the CENVAT Credit Rules, 2004.

5. The 1st respondent issued Show Cause Notice No.01/2017 dated 07.09.2017 to the petitioner. The aforesaid notice proposed levy of penalty under Rule 25 of the Central Excise Rules, 2002 for clearing goods without payment of duty. The aforesaid proceedings culminated in Order in Original.No.3/2017 of the 1st respondent. The 1st respondent did not confirm the duty proposed in the Show Cause Notice as the petitioner had exported goods out country. At the same time the 1st respondent held that the petitioner was liable to penalty under Rule 25 of the Central Excise Rules, 2002 for violating Rule 12 & 19 of the said Rules and Notification No.42/2001-CE(NT) dated 26.06.2001. The petitioner accepted the same and paid a sum of Rs.1,80,000/- as penalty on 16.12.2017.

6. It is the case of the petitioner that during the interregnum the Central Excise Act, 1944 and Tamil Nadu Value Added Tax Act, 2006 came to be substituted by the Central Goods and Service Tax Act, 2017 and Tamil Nadu Goods and Service Tax Act, 2017 and therefore the petitioner's unit had to migrate to the GST regime under the provisions of the respective Goods and Service Tax Act, 2017 and the rules made their under with effect from 01.07.2017.

7. The petitioner therefore filed Trans -1 and transferred its unutilized credit amounting to Rs.2,86,19,907/- at Ambattur unit, in Chennai, Tamil Nadu under the Central Goods and Service Tax Act, 2017. The petitioner also transferred a sum of Rs.31,38, 891/- input tax credit allegedly lying unutilized



input tax under TNVAT Act, 2006 and filed Trans -1 under the provisions of the Tamil Nadu GST, 2017. Having transferred both the amounts, the petitioner attempted to file Form GST ITC-02 in terms of Rule 41 of the Central GST Rules, 2017 and Tamil Nadu GST Rules 2017 to transfer the aforesaid sum of Rs.2,86,19,907/- and Rs.31,38,891/- to its Sri City unit in Andhra Pradesh for which the petitioner had obtained separate registration which is being thwarted by the architecture of the website.

8. Simultaneously, the petitioner had also attempted for getting refund of the aforesaid amounts from the 3rd respondent. These applications were rejected by the 1st respondent. The petitioner was directed to approach the State authorities for claiming refund.

9. It is the case of the petitioner that it is entitled to transfer the unutilized credit to its Sri City unit, Andhra Pradesh in terms of Section 18(3) of the Central Goods And Service Tax Act, 2017 read with Rule 41 of the CGST rules, 2017. It is submitted that similarly the petitioner is entitled for transfer of its input tax credit lying unutilized under TNVAT Act, 2006.

10. The learned counsel for the petitioner submits that the capital goods have been already transferred to its Sri City unit, Andhra Pradesh and therefore it is entitled for transfer the unutilized input tax credit. However, the attempt of the petitioner to transfer the input tax credit lying unutilized through Form GST ITC-02 was not fruitful as the drop box on the dashboard of the respondent screen states that GST number entered should be that of a local unit located in Andhra Pradesh therefore transfer of credit was not permissible.

11. It is further submitted that the transfer of input tax credit lying utilized in its unit in Chennai to another unit in Sri City, Andhra Pradesh cannot be curtailed as in the case of amalgamations contemplated in Section 18(3) of the Central GST Act, 2017 and Rule 41 CGST Rules 2017.

12. It is further submitted that both the provisions do not contemplate any restriction for transfer of credit from one unit to another unit of the same assessee and therefore disabling the petitioner from transferring the same by disabling the key in the GST registration number in form GST ITC-02 is arbitrary, unreasonable and in violation of the provisions of the CGST Act, 2017.

13. Learned counsel for the petitioner relied on the following case laws:-

- i) Flex Art Foil Pvt.Ltd vs. Commissioner of C.Ex.Deman, 2011(22) S.T.R.591 (Tri.Ahmd.)



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ii) Slovak India Trading Co.Pvt.Ltd., vs. Commissioner of C.Ex.,Bangalore, 2006(205) E.L.T.956 (Tri.Bang.)

iii) Union of India vs. Slovak India Trading CO.PVT.LTD, 2006(201) E.L.T.559 (Kar.)

iv) Computer Graphics Ltd., vs. Commissioner of Central Excise, Tirunelveli, 2016-VIL-934-CESTAT-CHE-CE

v) Slovak India Trading Co., Pvt. Ltd. Vs. Commissioner of C.Ex.Bangalore, 2006(205) E.L.T.956 (Tri.Bang.)

vi) Ghodawat Foods International P.Ltd., vs. Commissioner of Central Tax & Ex.Belgaum, 2020(371) E.L.T.299 (Tri.- Bang.)

vii) Leo Prime Comp.Pvt., Ltd., vs. Dy. Commissioner of Central Excise, Puducherry, 2020(373) E.L.T.820 (Mad.)

The learned counsel also placed reliance on the following decision:-

i) Delta Power Solutions India Pvt.Ltd., vs. Commissioner of Central Excise, Puducherry, 2016-VIL-938-CESTAT-CHE-CE

ii) The Commissioner of Central Excise Puducherry Commissionerate, Goubert Avenue, Puducherry vs. M/s.Delta Power Solutions India Pvt.Ltd., 2018-VIL-571-MAD-ST

iii) K.G.Denim Ltd., vs. CESTAT, Chennai, 2017(7) G.S.T.L.422 (Mad.)

iv) M/s.Welcuredrugs and Pharmaceuticals Ltd., Having Office at V-9 & 10 Laxmi Tower, LSC, Block-C Saraswati Vihar, Delhi 110 034, through its Authorized Signatory Shri D.C.Jain, vs. Commissioner of Central Excise, Jaipur NCR Building, Statue Circle Scheme, Jaipur 302 005, D.B.Central /Excise Appeal No.118/2017

v) Commissioner of Ex.,Chennai-III vs. Featherlite Products Pvt.Ltd., 2017(353) E.L.T.439 (Mad.)

vi) Commissioner v. Featherlite Products Pvt.Ltd., 2018(360) E.L.T.A 126 (S.C.)

vii) Vision Distribution Pvt., Ltd., vs. Commissioner, State Goods & Services Tax & Ors, 2019-VIL-626-DEL.

14. Defending the stand of the revenue Mr.A.P.Srinivas, the learned Senior Standing counsel for respondent Nos. 1,2 5 & 6 - and Mr.Mohammed Shaffiq, the learned Special Government Pleader, for the respondent Nos.3,4 & 7 duly assisted by Ms.G.Dhana Madhri (Government Advocate) submitted that there is no question of transfer of the input tax credit under the new regime and/or under the old regime.



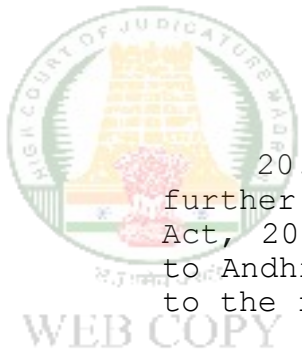
15. As far as transfer of input tax credit from the provisions of the TNVAT Act, 2006 is concerned Mr.Mohammed Shaffiq, the learned Special Government Pleader, for the respondent Nos.3, 4 & 7 submitted that the right to file Trans-1 and consequent Trans-2 would survive only if the unit was carrying on business in the State of Tamil Nadu within the State. In this case, admittedly, the petitioner has shut down the business during July 2016 and therefore in terms of section 19(9) of the TNVAT Act 2016 there is no question of credit surviving.

16. As far as transfer of credit under Central GST is concerned, learned Senior standing counsel Mr.A.P.Srinivas for Respondent Nos.1,2 5 & 6 submitted that refund of unutilized input tax credit would have survived only if refund was made under Rules of the Central Excise Rule, 2002.

17. As far as transfer of input tax credit under Rule 10 of the erstwhile Central Credit Rules, 2004 is concerned it is submitted that it would arise only in the event of shifting of factory to another site or transfer of factory on account of change of ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with transfer of liabilities of such factory. It is submitted that the petitioner has not filed application under Rule 10 of the Cenvat Credit Rules, 2004 before shifting. It is submitted that the transfer of input tax credit is not automatic as under Rule 10(3) of the Cenvat Credit Rule 2004. The Assistant Commissioner of Deputy Commissioner has to satisfy that the stock of input or work in progress or capital goods were also transferred along with the factory or with the business premises to the new site and the input or capital goods were duly accounted for and therefore the transfer of cenvat credit based on alleged oral request is neither permissible nor can be allowed.

18. Alternatively, it is submitted that having transferred the credit to CGST and SGST by filing TRANS 1, further transfer under Cenvat Credit Rules, 2004 is not permissible. It is further submitted that in any event refund under Section 54 of the CGST Act, 2017 is not permissible.

19. He further submitted that the circumstances in which a person is entitled to refund and the manner in which the same has to be claimed as provided u/s.54 of the CGST Act is not applicable to the case of petitioner as it does not fall in any of the circumstances specified in Sec.54 of CGST Act. Further to claim refund under CGST Act, 2017, the person has to file application in the prescribed manner and form and it is also subject to limitation under Section 54. It provides for relevant date and therefore the petitioner is not eligible to claim refund under the CGST Act.



20. Learned counsel for R1, 2, 5 and 6 Mr.A.P.Srinivas, further submitted that the transfer under Section 18(3) of CGST Act, 2017 read with Rule 41 of CGST Rules, 2017 from Tamil Nadu to Andhra Pradesh is also not permissible as it is confined only to the following five categories :-

- i) Sale
- ii) Merger
- iii) Demerger
- iv) Amalgamation
- v) Lease or transfer of business

21. It is submitted that there is no change in constitution of the petitioner herein. The case of the petitioner for shifting of its unit from one State to another State is not contemplated under the above provisions.

22. It is further submitted that under the respective GST enactments, separate Statewise registration u/s.25 is contemplated and when a person is having units in different States or Union Territory, every and every such unit situated in such State or Union Territory is an independent assessee in the respective State or Union Territory and they are considered as separate and distinct person and not as the same person. Admittedly, the petitioner is having separate GST Registrations for the defunct unit at Chennai and separate GST registrations for the unit at Andhra Pradesh and under Sec.25 of the respective GST enactments. It is submitted that they have treated as separate and distinct persons.

23. It is submitted that since under Section 25 of the respective GST enactments, each unit in different State is a distinct person, the concept of tax free Branch transfer, depot transfer or consignment sale are not applicable. If the goods are transferred from one branch (from one State) to another branch in a different State, then the assessee has to pay integrated GST. The Credit alone cannot be transferred between units or depots or branches situated in different states. To claim credit in the transferee state, the goods must be supplied with GST invoice from the transferor state. Without payment of GST, the Credit available in one State cannot be transferred to another State even between the branches or Depots or Units or Agents.

24. It is further submitted that the capital goods have been allegedly transferred in the Central Excise regime in June 2016. However, the petitioner failed to make a claim and therefore he cannot maintain the prayer to transfer the Credit under the GST Act. It is submitted that the petitioner ought to have pursued its right under Rule 10 of the CENVAT Credit Rules, 2004, for transfer of CENVAT Credit in accordance with Rule 10 at that



time itself by complying with the requirements of Rule 10 of the CENVAT Credit Rules, 2004. It is submitted that the petitioner was taking inconsistent stand. For the goods allegedly shifted in the year June 2016, under the Central Excise Act regime, the petitioner cannot seek any remedy under the GST Act now.

25. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents. The petitioner claims to have shifted its factory and office during the month of June-July 2016 to Sri City, in Andhra Pradesh. However, while, effecting such transfer, the petitioner did not opt for following the procedure under Rule 10 of the CENVAT Credit Rules, 2004.

26. At that point of time, the petitioner had at least 3 to 4 separate registrations. The petitioner had registration under the provisions of the TNVAT Act, 2006, Finance Act, 1994, under the provisions of the Central Excise Act, 1944 read with Rule 9 of the Central Excise Rules, 2002 and under Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994. Possibly, it must have had a registration under Central Sales Tax Act, 1956 also.

27. I shall first deal with the issue relating to transfer/refund of VAT input tax credit with the implementation of the Tamil Nadu Goods and Service Tax Act, 2017 with effect from 01.07.2017.

28. The petitioner wants to transition the credit to its Sri City Andhra Pradesh Unit or in the alternative wants a refund of the aforesaid amount.

29. As per the monthly return filed for the month of June 2017, petitioner has claimed balance of unutilized input tax credit of Rs.31,38,891/-. This amount was transferred by the petitioner by filing Trans-1 under sub-section (4), (5) & (6) to Section 140 under Chapter XIV of the Tamil Nadu Goods And Service Tax Act, 2017 read with Tamil Nadu Goods and Service Tax Rules, 2017.

30. Section 140(4), (5) & (6) of the Tamil Nadu Goods and Service Tax Act, 2017 read as under:-

"Section 140. Transitional arrangements for input 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 [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]



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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.

(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day [within such time and] in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

Explanation:- For the purposes of this subsection, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No.26/2012-Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, 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, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:-



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(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;

(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and

(v) the supplier of services is not eligible for any abatement under this Act:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the sale of taxable goods as well as exempted goods or tax free goods, by whatever name called, under the existing law but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,-

(a) the amount of credit of the value added tax and entry tax, if any, 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 credit of the value added tax and entry tax, if any, in respect of inputs held in stock and inputs contained in semi-finished goods held in stock on the appointed day, relating to such exempted goods or tax free goods, by whatever name called, 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 value added tax and entry tax, if any, in respect of inputs received on or after appointed day but the tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other tax paying document of the same was recorded in the books of account of such person



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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 the 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.

(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of value added tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely-

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is not paying tax under Section 10;

(iii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iv) the said registered person is in possession of invoice or another prescribed documents evidencing payment of tax under the existing law in respect of inputs; and

(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day."

31. There are no transactions within the State of Tamil Nadu after 2016. The petitioner had no scope for utilizing the same. Sub-clause (ii) to first proviso to Section 140 of the Tamil Nadu General and Service Tax Act, 2017 makes it clear that a registered person shall not be allowed to take credit where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date.

32. Such transfers are further subject to Rule 117(3) of the Tamil Nadu Goods and Services Tax Rules, 2017. It reads as under:-

"Rule 117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day-

(1)

(2)



(3) The amount of credit specified in the application in FORM GST TRAN-1 shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the common portal."

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33. The petitioner cannot further transfer such credit to its Sri City Unit in Andhra Pradesh in view of Section 18(3) of the Tamil Nadu Goods and Service Tax Act, 2017, which reads as under:-

"Section 18. Availability of credit in special circumstances-

(1)

(2)

(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed."

34. The credit would have survived for being transitioned under the Tamil Nadu Goods and Service Tax Act, 2017 provided the petitioner continued to have transactions in Tamil Nadu. It is confined to credit which was carried forward under any existing law or goods which were held in stock on the appointed date. Therefore, the aforesaid amount of input tax credit, even if it was lying unutilized as on 01.07.2017 cannot be transitioned to a new registration obtained after implementation of the respective Goods and Service Tax enactments to its Sri City Unit in Andhra Pradesh in the light of Section 25 (5) of the respective Goods and Service Tax Enactments.

35. The petitioner's case also does not fall within the purview of Section 54 of the Tamil Nadu Goods and Service Tax Act, 2017 read with Chapter X of the Tamil Nadu Goods and Service Tax Rules, 2017. Refund of unutilized credit, it is permissible under Section 54(3) of the TNGST Act, 2017, only if such credit is lying unutilized at the end of the tax period.



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36. Therefore, the prayer of the petitioner for either transfer or refund of such input tax which was credit lying utilized under TNVAT Act, 2006 does not arise. To that extent the writ petition is liable to be dismissed.

37. As far as transfer of input tax credit on the "inputs" and "input services" under the provisions of the Cenvat Credit Rules, 2004 is concerned, it is noticed that the petitioner had separate excise registration and service tax registration.

38. It is noticed that the petitioner had a credit balance of input tax credit of Rs.2,77,10,052/- which was lying utilized in its monthly return in ER-1 filed for the month of June 2017 which the petitioner has transitioned in its Trans-I on 22.08.2017.

39. The petitioner had a separate service tax registration and was purportedly availing credit on various "input services" for discharging its service tax liability under Finance Act, 1994. It appears that it was involved separately in provision of taxable services as is evident from Sl.No.10(1) of its Half Yearly Service Tax Return in Form ST-3 filed on 22.08.2017.

40. Copy of service tax return in Form ST-3 filed on 22.08.2017 is for the period between April-September 2017. It shows that the petitioner had a opening balance of credit of Rs.9,09,855/- as input tax credit as on 1st day of April 2017.

41. There was no use of such service in the manufacturing activity. Therefore, it was not capable of being used for meeting the excise duty liability.

42. It indicates that credit also was carried forward from the previous returns and the same was filed for the period between April-September 2017. This would however require a proper verification as to whether the credit that was transferred as opening balance on 1st day of April 2017 was indeed the closing balance on 31st March 2017.

43. Unless there is a proper verification as to whether this credit was validly shown as opening balance as on 1st April 2017 in the returns filed in Form ST-3 filed on 22.8.2017, there is no question of either transitioning it into Trans-1 or its further utilization. If such credit of Rs.9,09,855/- was reflected in the previous returns, the petitioner may be entitled to utilize the same if it raises invoice for supply of goods or service from its Chennai office even though the petitioner has shifted its operation from Chennai to Andhra Pradesh during June 2016.



44. To that extent, after verification of the aforesaid credit of Rs.9,09,855/- input tax credit availed on input service, can be allowed to be utilized by the petitioner. Jurisdictional officer who is responsible examining the correctness of the above input tax credit on the input service amounting to Rs.9,09,855/- may therefore examine the same and pass appropriate orders in accordance with law within a period of three months of this order.

45. As far as the input tax credit availed on "inputs" out of a sum of Rs.2,77,10,052/- is concerned, it would altogether require a separate reconsideration on facts.

46. This credit was purportedly carried forward by the petitioner all through the period commencing from the month of June, 2016 when the petitioner had shifted its factory from Ambattur Industrial Estate, Chennai to Sri City in the State of Andhra Pradesh in contravention of Rule 10 of the Cenvat Credit Rules, 2004.

47. If the petitioner wanted to transfer such input tax and capital goods credit to its new unit Sri City in the State of Andhra Pradesh, it should have complied with the statutory requirements under Rule 10 of the Cenvat Credit Rules, 2004 as it stood then. The transfer of input tax credit under the aforesaid rules was subject to sub-clause (3) to Rule 10 of the Cenvat Credit Rules, 2004. Rule 10 of the Cenvat Credit Rules, 2004 which reads as under:-

(1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.

(2) If a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the provider of output service shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated business.



51. It does raise a serious question as to why the petitioner neither utilized the credit for payment of excise duty by debiting the input tax credit availed on input and input service on the goods exported and claim rebate under the scheme of the Central Excise Rules, 2002 or take steps for transferring the input tax credit under Rule 10 of the Cenvat Credit Rules, 2004 or file a refund claim under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No.27/2012(ENT) dated 18.06.2012.

52. Order-in-Original No.3/2007(AC) dated 10.11.2017 also indicates the petitioner was irregular in filing periodical monthly returns. The said order also mentions about the monthly returns filed in ER-1 during the month of January, 2015 to December, 2016. It was either open for the petitioner to utilize the aforesaid input tax credit for discharging excise duty on export goods and claim rebate under Rule 18 of the Central Excise rules, 2004 or file a refund claim under Rule 5 of the Cenvat Credit Rules, 2004 read with the relevant notification. In any event the petitioner should have complied with the requirements of Rule 10 of the CENVAT Credit Rules, 2004.

53. The said Order-in-Original No.3/2007(AC) dated 10.11.2017 though mentions about the monthly returns, it does not mention about the input tax credit lying unutilised in these returns. Therefore, unless same is verified and such credit and was periodically carried forward in the monthly returns, question of the petitioner transferring such credit into Trans-1 or directly asking the respondent to refund the aforesaid amount cannot be countenanced. This would require proper verification. Facts are not clear.

54. There is also no question of transferring the aforesaid amount to the petitioner's Sri City Factory in the State of Andhra Pradesh for utilizing its tax liability as the petitioner failed to follow Rule 10(3) of the Cenvat Credit Rules, 2004.

55. Sub Section 2 to Section 25 of the Central Goods and Service Tax Act, 2017 also makes it clear that a person seeking registration under the aforesaid Act shall be granted a single registration in a State or Union Territory. The proviso also makes it clear that a person having multiple places of business in a State or Union Territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.

56. That apart, sub-section 4 to Section 25 of the Central Goods and Service Tax Act, 2017 also makes it clear that a



person who has obtained or is required to obtain more than one registration in a State or Union Territory, whether in one State or Union Territory or more than one State or Union Territory shall, in respect of each such registration, be treated as a "distinct persons" for the purpose of the Act. Therefore, even though the petitioner has closed the operation at its Ambattur location and has obtained separate registration under the Central Goods and Service Tax Act, 2017 and it is a "distinct person" different from the registration obtained under the provisions of the same Act in Andhra Pradesh.

57. As far as the transition of the input tax credit lying unutilized which was availed under the provisions of the erstwhile CENVAT Credit Rules, 2004 is concerned the transition is covered by Chapter XX, Section 139 to Section 142 of the Central Goods and Services Tax Act, 2017 which is parimateria with provisions of the Tamil Nadu Goods and Services Tax Act, 2017 which is parimateria with provisions of the Tamil Nadu Goods and Services Tax Act, 2017 which has already been reproduced above. The proviso to sub-section to Section 140 of the Central Goods and Services Tax Act, 2017 makes it clear that a registered person shall not be allowed to take credit under the following circumstances:-

(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.

58. The sub-clause (ii) to proviso to Section 140(1) of the Central Goods and Services Tax Act, 2017 makes it very clear that credit shall not be allowed where such registered person has not produced all returns required under the existing law for the period of six months immediately preceding the appointed date.

59. Order-in-Original No.3/2017(AC) dated 10.11.2017 passed by the 1st respondent indicates that the petitioner had not mentioned/declared export clearances in its ER-1 Returns for the period commencing from January, 2015 ending with June, 2016. It is further noticed that the petitioner had exported goods for a



assessable value of Rs.33,90,82,523/- without paying duty or executing proper bond under Rule 19 of the Central Excise Rules, 2002. The duty payable on the exported goods was determined as Rs.4,23,51,107/-. Thus, the credit of Rs.2,77,10,052/- which was transitioned would have been sufficient to cover a part of the duty liability on the exported goods and the petitioner could have availed rebate under Rule 18 of the Central Excise Rules, 2002 or to claim refund of input tax credit on the input used in the manufacture of export goods under Rule 5 of the CENVAT Credit Rules, 2004.

60. Strangely, the petitioner had not opted for any of the above while making export. The, fate of such input tax credit lying unutilized is to be examined in the light of the provisions of the Central Excise Act, 1944, Central Excise Rules, 2002, CENVAT Credit Rules, 2004 and the relevant notifications. It is assumed that the petitioner had opted neither to pay excise duty to claim rebate under Rule 18 of the Central Excise Rules, 2002 as it stood then nor in the alternative claimed refund under Rule 5 of the CENVAT Credit Rules, 2004. There is also no explanation forthcoming from the petitioner as to why the petitioner failed to opt for Rule 10(3) of the CENVAT Credit Rules, 2004.

61. It is quite possible that the petitioner while removing the capital goods, work in progress and inputs had not discharged its liability under Rule 3(5) of the CENVAT Credit Rules, 2004. It would require for detailed examination by the concerned jurisdictional officer. Therefore, refund of input tax credit lying unutilized which has been transitioned by filing with Trans-1 after the implementation of Central Goods and Services Tax Act, 2017 under Section 54 of the Central Goods and Services Tax Act, 2017 as in the Section 54 of the the Tamil Nadu Goods and Services Tax Act, 2017 cannot be considered.

62. The scheme of the Act for refund is confined by the situation contemplated under the Act. Section 54 of the said Act is to be read inconsonance of Chapter X of the Central Goods and Services Tax Rules, 2007. The above provision is also in parimateria with the provisions of the Tamil Nadu Goods and Services Tax Act, 2017.

63. Therefore, I do not find any merits in this Writ Petition for either transfer of refund of input tax Credit (CENVAT Credit) which was transitioned by the petitioner by filing Trans-1. Such credit has to be decided in the light of the provisions of the Central Excise Act, 1944 and Central Excise Rules, 2002 only.



64. This Writ Petition is therefore dismissed with liberty to the petitioner to work out the remedy in accordance with law under the provisions of the Central Excise Act and the Rules made therein and thereafter approach the authorities under the GST enactments for refund. No costs.

s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

1. The Assistant Commissioner,
Office of the Commissioner of GST and Central Excise,
Chennai North Commissionerate,
R-40, A-1, 100 Feet Road,
Mogappair, Chennai - 600 037.
2. The Additional Commissioner of GST,
Officer of the Commissioner of GST and Central Excise,
Chennai North Commissionerate,
R-40, A-1, 100 Feet Road,
Mogappair, Chennai - 600 037.
3. The Assistant Commissioner of CT,
Anna Salai Assessment Circle,
No.621, Anna Salai, 'Sire Manson',
Chennai - 600 006.
4. The Assistant Commissioner of CT,
Egmore Assessment Circle,
Taluk Office Building, Spurtank Road,
Chetput, Chennai - 600 031.
5. The Assistant Commissioner,
Office of the Commissioner of
Central Tax Goods & Service Tax,
Sri City Range, Tirupati Division,
15-30/4, Padmavathi Nagar,
Mahila University Road,
Tirupati - 517 502.
6. The Chairman,
Goods and Services Tax Network (East Wing),
4th Floor, World Market,
New Delhi - 110 037.



7. The Assistant Commissioner (State Tax),
Ambattur Industrial Estate, Yadhaval Street,
Padi, Chennai.

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W.P.No.27159 of 2018

SVI (CO)
SP (20/07/2021)