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W.P.No. 30706 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No. 30706 of 2019

M/s. Magna Automotive India Private Ltd.
(Earlier known as Cosma International
(India) Pvt. Ltd.)

Represented by its Bhoovarahan
Srinivasan General Manager
Plot No. RNA 11,
SIPCOT Industrial Growth Centre,
Oragadam, Vadakapattu Post,
Sriperambudur-603 204.

...Petitioner

Vs.

1. Commissioner of GST and Central Excise
Chennai Outer Commissionerate
MHU Complex, Nandanam
Chennai 600 035
2. Assistant Commissioner of GST Central Excise
Irungattukottai Division,
Chennai Outer Commissionerate
C-48, TNHB Building,
Anna Nagar, Chennai 600 040
3. Commissioner of Central Tax (Appeals-II)
Newry Towers 2054 / 1
II Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040
4. Union of India
Represented by Revenue Secretary
North Block
New Delhi-110 001.

...Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified mandamus calling for the records relating to the impugned Order in Appeal No. 78/2019 (CTA-II) dated 29.03.2019 passed by the 3rd Respondent and quash the same and direct the Respondents to grant the impugned amount to the Petitioner either as Credit under Central Goods and Service Tax Act 2017 or as refund in cash.

For Petitioner : Mr.Santhana Gopalalan D.
For Respondents : Mr.H.Siddharth
Junior Standing Counsel
for
: Mrs.R.Hemalatha [R1 to R3]
Senior Standing Counsel
: Mr.V.Chadrasedkaran [R4]
Senior Panel Counsel

ORDER

The petitioner has challenged an order of the first Appellate Authority dated 29.03.2019 on the ground that there is no Tribunal constituted under Section 112 of the Goods and Service Tax Act, 2017 (in short 'Act'). The facts and issues are that the petitioner believes that it is entitled to input tax credit (ITC) with regard to certain imports of capital goods.

2. According to the learned counsel for the petitioner, no credit was claimed during the relevant point in time and with the subsuming of the Customs Act, 1962 with the Goods and Service tax (GST) regime with effect



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from 01.07.2017, the petitioner also failed to make a request for transition of such credit in terms of the GST Act.

3. What the petitioner did was that it merely filed an application for refund by way of an application for manual revision of excise return on 12.04.2018, seeking refund of the credit to which it believed it was entitled. A show cause notice was issued to which the petitioner responded and an order-in-original came to be passed on 12.12.2018 rejecting the refund claimed.

4. Assailing the aforesaid order of refund, the petitioner filed a first appeal. It was only in the course of the first appeal did the petitioner put forth an alternate claim for transition of the credit. This alternate claim has been noted by the first appellate authority at para 4 of the order.

5. Ultimately, the claim came to be rejected, the Authority stating that there is no provision in law for allowing such transition. No reference has been made to the provisions of Section 140(2) that permits transition of CENVAT credit in respect of capital goods, not carried forward in a return furnished under the existing law.

6. Section 140(2) and the explanation therein are extracted below:

140(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his



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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 sub-section, 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.

7. The stand of the revenue is that, the transition of credit shall be permitted only in the event that a portion of the credit had been claimed by the petitioner at that relevant point in time. Position has also been explained in the Guidance Note for CGST Transition Credit dated 14.03.2018, which at clause 2, states as follows:

S.No.	Table No.1 in TRAN-1	Provision in CGST Act	Indicative list of nature of Credit
.....			
2.	Column 11 of table 6(a)	140(2)	<i>This table captures details of un-availed credit of capital goods in the pre-GST era. Capital Goods credit was allowed to be availed in two installments of 50% each. This table is meant to be used by the taxpayers who have availed a portion of CENVAT credit on capital goods</i>



*through ER or ST return and now intend to **avail remaining credit in respect of capital goods which has not been availed through the ER or ST return.***

8. It thus appears to be a pre-condition for the claim of unavailed credit on capital goods that the assessee concerned ought to have claimed, at the original instance, at least a portion of the credit. Admittedly, in the instant case, the petitioner has made no claim at all.

9. However, seeing as the Assessing Authority has not had any opportunity to address the claim of transitional credit as the claim was made for the first time in appeal, an opportunity is granted to the petitioner to make a claim before the Assessing Authority who shall, upon receipt of the claim, dispose the same within a period of two weeks from date of receipt, after hearing the petitioner.

10. The impugned order is not interfered with in these circumstances but it is made clear that the Authority while disposing the request for transition, if and when made, shall take an independent view and not be bound either by the conclusion of the Appellate Authority or by the prima facie observations made in this order.



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11. This writ petition is disposed in the above terms. No costs.

12.10.2022

Index : Yes/No

Speaking Order

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To

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