



W.P.No.16638 of 2023

**WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 20.09.2023

CORAM :

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

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M/s.PMA Controls India Limited  
Represented by its Director R.Ramesh,  
Plot No.145A, Developed Plots Estate,  
2nd Cross Street,  
Perungudi, Chennai - 600 096.

... Petitioner

Vs.

1.The Joint Commissioner of Central Tax (Appeals-II),  
Office of the Commissioner of GST  
& Central Excise (Appeals-II),  
Government of India,  
Ministry of Finance,  
Newry Towers,  
No.2054, I-Block, II Avenue,  
12th Main Road, Anna Nagar,  
Chennai - 600 040.

2.The Assistant Commissioner,  
Office of the Assistant Commissioner of GST  
& Central Excise,  
Thuraipakkam Division,  
Chennai South Commissionerate,  
Government of India,  
Ministry of Finance,  
Department of Revenue,



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No.692, Anna Salai,  
I Floor, MHU Complex,  
Nandanam, Chennai - 600 035.

3.The Assistant Commissioner-Audit II  
Commissionerate,  
Office of the Commissioner of GST  
& Central Excise,  
No.692, 6th Floor, MHU Complex,  
Anna Salai.  
Nandanam, Chennai - 600 035.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the first respondent in Order-in-Appeal No.267/2022-JC (GSTA-II), dated 04.08.2022 and quash the same in so far as it upholds the Order-in-Original No.05/2022, dated 28.02.2022, passed by the second respondent, in respect of confirming the demands, levying interest and imposing penalty, with consequential reliefs.

For Petitioner : Mr.C.Seethapathy

For Respondents : Mr.Rajendran Raghavan  
Senior Standing Counsel

### **ORDER**

The petitioner is aggrieved by the impugned Order-in-Appeal No.267/2022-JC (GSTA-II) dated 04.08.2022 passed by the first respondent herein.



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2. By the impugned order, the first respondent has partly allowed the petitioner's Appeal against Order-in-Original No.05/2022 dated 28.02.2022 passed by the second respondent.

3. Vide Order-in-Original No.05/2022 dated 28.02.2022, the second respondent had passed the following order:-

***"1. I drop the demand of Input tax credit of Rs.36,94,981/- (Rupees Thirty Six Lakhs Ninety Four Thousand Nine Hundred and Eighty One only) (CGST of Rs.2,36,412 + SGST of Rs.2,36,412/- + IGST of Rs.32,22,157/-) availed against the documents whose address was not included as additional place of Business due to technical glitch during the period from July, 2017 to March, 2020, for the reasons mentioned in para 16.1.***

***2. I demand Input Tax Credit of Rs.35,525/- (Rupees Thirty Five Thousand Five Hundred and Twenty Five only) (CGST of Rs.14,711/ + SGST of Rs.14,711/- + IGST of Rs.6,103/-) being excess Input Tax Credit availed in GSTR-3B during the period from April, 2018 to March, 2019 for the reasons stated in para 16.2 above.***

***3. I demand appropriate interest under section 50(3) of CGST Act, 2017/TNGST Act, 2017.***

***4. I impose a penalty of Rs.35,525/- under Section 122(2)(a) read with Section 74(1) of the CGST Act, 2017, SGST Act, 2017 and as made applicable to IGST Act as per Section 20 of IGST Act, 2017 to the tune of Rs.35,525/-.***



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5. *I demand the Transitional credit of Rs.12,47,610/- (Rupees Twelve Lakhs Forty Seven Thousand Six Hundred and Ten only) (CGST of Rs.6,23,805/- + SGST of Rs.6,23,805/-) availed Suo-Moto on Closing Balance of ER-1 Return for the month of June, 2017 in GSTR-3B during the month of September, 2018 for the reasons stated in para 16.3 supra.*

6. *I demand interest at appropriate rate under section 50 (3) of CGST Act, 2017/TNGST Act, 2017.*

7. *I impose a penalty to the tune of R.12,47,610/- under Section 122(2)(a) read with Section 74(1) of the CGST Act, 2017, SGST Act, 2017 and as made applicable to IGST Act as per Section 20 of IGST Act, 2017.*

8. *I appropriate part payment to the tune of Rs.12,43,610/- (Rupees Twelve Lakh Forty Three Thousand Six Hundred and Ten only) only paid by the taxpayer vide DRC-03 debit entries no.DI3308210198797 and DC3308210166393 both dated 17.08.2021 against the above sub-para (5) of Para 17.*

9. *I demand the ITC credit of Rs.47,355/- availed on ineligible ITC credit such as Restaurant services, Travels and Insurance etc. for the reasons stated in para 16.4(a) supra.*

10. *I demand interest under Section 50(3) of CGST Act, 2017/TNGST Act, 2017.*

11. *I impose a penalty of Rs.47,355/- under Section 122(2)(a) read with Section 74(1) of the CGST Act, 2017, SGST Act, 2017 and as made applicable to IGST Act as per Section 20 of IGST Act, 2017.*

12. *I demand the excess credit of Rs.13,268/- availed as per GSTR3B vs their work sheet/credit Ledger the taxpayer for the reasons stated in para 16.4(b) supra.*

13. *I demand interest under section 50(3) of CGST Act, 2017/TNGST Act, 2017.*



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***14. I impose a penalty of Rs.13268/- under Section 122(2)(a) read with Section 74(1) of the CGST Act, 2017, SGST Act, 2017 and as made applicable to IGST Act as per Section 20 of IGST Act, 2017.***

***15. I drop further proceedings on the demand of the ITC credit of Rs.11,354/- for the reasons stated in para 16.4 (c) and drop further proceedings on this issue.***

***16. I drop further proceedings on the demand of the ITC credit of Rs.16,310/- for the reasons stated in para 16.4 (d).***

***17. I demand the irregular ITC credit availed Rs.6,912/- availed on invoices not reflected in their GSTR2A for the reasons stated in para 16.4 (e) supra.***

***18. I demand appropriate interest under section 50(3) of CGST Act, 2017/TNGST Act, 2017.***

***19. I impose a penalty of Rs.6,912/- under Section 122(2)(a) read with Section 74(1) of the CGST Act, 2017, SGST Act, 2017 and as made applicable to IGST Act as per Section 20 of IGST Act, 2017."***

4. By the impugned Order-in-Appeal No.267/2022-JC (GSTA-II), on 04.08.2022, the first respondent has passed the following order. Operative portion of the order reads as under:-

***"6. I find that the credit availed in GSTR-3B as stated above Rs.12,47,610/- being ITC not availed and needs to be demanded with interest and penalty under Section 122(2)(a) read with Section 73(1) of the CGST Act, 2017. The appellant has paid Rs.12,43,610/- on 17th August 2021 leaving Rs.4,000***



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*unpaid which is yet to be recovered and the appellant has not paid applicable interest as on date. However, I uphold the impugned order demanding Rs.12,47,610/- with applicable interest under Section 50(3) of the Act/TNGST Act, 2017 and appropriating Rs.12,43,610/- paid on 17th August 2021. Since the demand is sustainable, I revise the penalty at the rate of 10 percent of the tax Rs.12,47,610/- i.e., Rs.1,24,761/- on the appellant under Section 122(2)(a) of the Act, read with Section 73(1) of the Act.*

*7.0 .....*

*7.6. Thus, denial of ITC on account of default committed by the supplier is not sustainable in so far as the appellant has submitted all the invoices to the respondent, based on which the excess ITC Rs.35,525/- was determined for the period April, 2018 to March, 2019 as per para 4 & 16.2 of the impugned order. Also, I find that the respondent had not found any allegation that the appellant had not paid the tax, nor paid the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier as per proviso to Section 16(2) of the CGST Act, 2017 and the only allegation placed by the respondent is non-filing of GSTR 1 by the supplier. Thus, I find that in the absence of any finding about the appellant's malafide intention, connivance or wrongful association with the suppliers, no liability can be imposed on them and the demand of Rs.35,525/- along with interest and equal penalty is not in order and needs to be dropped and therefore, the appeal in this regard is allowed.*

*8. The appellant's third and last submission is that they are eligible to take IT on Hotel, Travel & Insurance services, etc. as these supplies of services are used for business purposes and for furtherance*



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*of business. In the impugned order, it has been held that the respondent has confirmed the demand held as the appellant has paid with interest after accepting the contention of the audit. After pursuing the reply to SCN, impugned order and grounds of appeal, I find that the appellant has accepted and paid the amount with interest before issue of SCN and no reply or grounds were submitted before the adjudicating authority for contesting the demand on ITC on Hotel, Travel, Insurance, etc. Therefore, I find that this is fresh ground at the appellate stage and I am not able to discuss what the adjudicating authority did not discuss. Accordingly, I uphold the impugned order confirming the demand Rs.47,355/- being the ineligible ITC availed on Hotel, Travel, Insurance, etc.*

*Further, the respondent has imposed penalty under section 122(2)(a) read with Section 74(1) of the Act. The appellant has availed the ITC Rs.47,355/- in GSTR-3B on Travel, Insurance and Hotels, etc. Since the respondent has not established any reason for fraud or any wilful misstatement or suppression of facts with intention to evade payment, I find that the ITC Rs.47,355/- availed is for any reason other than the reason of fraud or any wilful misstatement or suppression of fact to evade tax. The appellant has paid Rs.47,355/- with interest Rs.22,924/- as stated in impugned order in para 16.4(a) and as per chalan No.CPIN:21033300108251 dated 12.03.2021, has informed the proper officer in writing of the payment on 17.03.2021 addressed to the Superintendent of GST & Central Excise, Circle-III, Audit II Commissionerate. In light of the above facts and circumstance of the case, I find that section 73(1) of the Act is applicable. Accordingly, the equal penalty imposed invoking Section 74(1) of the Act is not*



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***tenable. Therefore I set aside the equal penalty Rs.47,355/- imposed vide the impugned order on the instant issue and I do not impose any penalty."***

5. The petitioner is a Central Excise Assessee, who had a sum of Rs.12,47,610/- as un-utilized Input Tax Credit as on 30.06.2017. This credit was sought to be transitioned by the petitioner under Section 140 of the Central Goods and Services Tax (CGST) Act, 2017 (hereinafter referred to as the CGST Act, 2017) and an attempt was made by the petitioner on 27.12.2017. However, the petitioner was unable to transition the credit on account of technical glitches.

6. The petitioner made a further attempt on 17.08.2021 to transition the aforesaid Credit, which was also allowed by the system. Meanwhile, the petitioner had wrongly availed Input Tax Credit for the aforesaid amount of Rs.12,47,610/- in its Electronic Credit Ledger and had utilized the same for discharging tax liability.

7. After the credit to an extent of Rs.12.43 lakhs was transitioned of Rs.12,47,610/- on 17.08.2021, the petitioner immediately debited the aforesaid amount of Rs.12,47,610/- which was claimed as Input Tax Credit

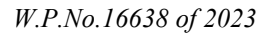


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and utilized earlier. Meanwhile, the petitioner was also issued with a Show Cause Notice Sl.No.71/2021 (GST) dated 19.07.2021 bearing reference DIN No.20210759XS00008188E5. In the above Show Cause Notice, among the issues, the petitioner was also called upon to show cause as to why the aforesaid amount of Rs.12,47,610/-, which was wrongly claimed as Input Tax Credit in Form GSTR-3B on 19.10.2018 should not be denied.

8. The specific case of the petitioner is that the impugned order dated 04.08.2022 of the first respondent seeking to levy interest on Rs.12.43 lakhs out of Rs.12,47,610/- of transitional credit which was allowed on 17.08.2021 is un-justified. It is submitted that no prejudice was caused to the revenue by availing of the Input Tax Credit on 19.10.2018 as the aforesaid amount could not be transitioned due to technical glitches.

9. That apart, the petitioner has also paid the differential amount of Rs.4,000/- (Rs.12,47,610/- - Rs.12,43,610/-) together with interest of Rs.3,112/- in all Rs.7,112/- on 30.01.2023. It is submitted that the petitioner was entitled to transition the entire amount of Input Tax Credit lying un-utilized on 30.06.2017 and thus, the petitioner made an attempt to file



It is further submitted that imposition of interest and penalty is un-justified, as admittedly the petitioner was entitled to transition the aforesaid credit of Rs.12.43 lakhs.

11. It is submitted that the petitioner had wrongly availed the Input Tax Credit, although the credit was to be transitioned by filing Form Tran-1. It is further submitted that the petitioner reversed the credit only on 17.08.2021 after the audit was conducted during January-2021 and after the mistake was pointed out to the petitioner. It is further submitted that a Show Cause Notice was also issued to the petitioner on 19.07.2021. It is only after the issuance of the Show Cause Notice, the petitioner has reversed the credit. Hence, it is submitted that the respondents are justified in imposing penalty on the petitioner under Section 50(3) of the CGST Act, 2017.



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WEB COPY 12. The learned Senior Standing Counsel submits that even otherwise penalty is to be imposed or interest is to be paid in terms of Section 73(9) of the CGST Act, 2017.

13. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

14. In this case, the issue is revenue neutral. The petitioner was entitled to transition/transmit the Input Tax Credit lying unutilized in his CENVAT account as on 30.06.2017 i.e., one day before the implementation of GST under Section 140 of the CGST Act, 2017. Thus, the Input Tax Credit that was lying unutilized was to be transitioned under the new regime in terms of Sections 139 and 140 of the CGST Act, 2017. However, on account of technical glitches, credit could not be transitioned under Section 140 of the CGST Act, 2017. It was however later allowed to be transitioned after the petitioner's Tran-1 application in Form Tran-1 was accepted by the respondents on 17.08.2021. The petitioner reversed the proportionate



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amount of Input Tax Credit, which was wrongly availed and utilized by the petitioner.

15. Since the issue is being revenue neutral, the imposition of penalty/interest either under Section 73(9) or Section 50(3) of the CGST Act, 2017, cannot be countenanced. In fact, while dealing with an identical situation in the case as an assessee under the provisions of the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017 in W.P.No.22241 of 2019 vide order dated 20.06.2022, a learned Single Judge of this Court held as under:-

***"8. The above provision, clearly, places a restriction on the availment of credit of any amount of refund to which the taxable person is entitled under the erstwhile laws. He really need not labour on this position for the reason that it is nobody's case that the petitioner is at all entitled to credit/transition. All the petitioner wants is a refund of the amount in question. In addition, the petitioner would pray that the penalty and interest levied under the impugned order be set aside as the act of transition, though incorrect, was only to ensure the protection of its interest.***

***16. Coming to the imposition of penalty and levy of interest under the impugned order, I am of the view that sustaining the same would be hyper-technical. No doubt, the petitioner has made an inadmissible claim of transition. However, I have noticed earlier that it was a last ditch effort by a desperate assessee and I reiterate that view."***



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WEB COPY 16. If the petitioner had been allowed to successfully transition the credit under Sections 138 to 140 of the CGST Act, 2017, then and there, the amount would have been available for being utilized. By availing the amount as regular credit and utilizing the same, the petitioner has not caused any loss to the revenue.

17. Therefore, I do not find any reasons to sustain the impugned order insofar as it seeks to impose interest at 10% and penalty on the petitioner as the issue is revenue neutral. This Writ Petition stands allowed to that extent with the above observations. No costs.

**20.09.2023**

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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To

- 1.The Joint Commissioner of Central Tax (Appeals-II),  
Office of the Commissioner of GST  
& Central Excise (Appeals-II),  
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**C.SARAVANAN, J.**

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