



W.P.No.20974 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.20974 of 2021

M/s.Ford India Private Limited,
(Represented by its Deputy Manager – Finance
Mr.Rajagopal Obbai)
Kilkaranai Village,
Maraimalai Nagar,
Tamil Nadu – 603 204.

... Petitioner

Vs.

- 1.The Assistant Commissioner of Central Tax,
Maraimalai Nagar Division,
Plot No.40, Ranga Colony,
Rajakilpakkam,
Chennai – 600 073.
- 2.The Joint Commissioner of Central Tax (Appeals-II),
Office of the Commissioner of Central Tax (Appeals-II),
CGST & Central Excise,
Newry Towrs, 2nd Floor, Plot No.2054, I Block,
II Avenue, Anna Nagar,
Chennai – 600 040.
- 3.The Joint Commissioner (ST),
Large Taxpayers Unit,
Chennai – 600 008.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the Impugned Order-in-Appeal No.22/2021-JC (GSTA-II) dated 17.02.2021 passed by the 2nd respondent and quash the same and direct the 1st respondent to grant the refund under Section 142(9)(b) of the Central Goods and Services Tax Act, 2017 to the petitioner.

For Petitioner : Mr.Raghavan Rambadran
for M/s.Lakshmi Kumaran and
Sridharan Attorneys

For Respondents : Mr.Ramesh Kutty
Senior Standing Counsel
Asst.by
Mr.B.Sivaraman
Junior Panel Counsel

ORDER

The Petitioner is before this Court against the Impugned Order dated 17.02.2021 in Order-in-Appeal No.22/2021-JC (GSTA-II) passed by the 2nd Respondent/Joint Commissioner of Central Tax (Appeals-II).

2. The 2nd Respondent vide the Impugned Order dated 17.02.2021 rejected the Petitioner's Appeal under Section 107 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as the 'CGST Act',



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2017) against the Order-in-Original No.160/2020 (RF) dated 15.09.2020

passed by the 1st Respondent, the Assistant Commissioner of Central Tax.

3. Operative portion of the impugned Order dated 17.02.2021 of the 2nd Respondent reads as under:-

“11. Next, the appellant contended that Refund of additional credit claimed in revised ER-1 return is available in terms of Section 142(9)(b). In the instant case, the additional credit has been claimed in the revised ER-1 return. As per Section 142(9)(b) CGST Act 2017, any amount of cenvat credit is found to be admissible, after the revision of return filed under the existing law within the time limit of such revision, the same shall be refunded in cash. Such situation arise in cases like excess payment of output tax liability wherein the amount can be refundable. In the instant case, the amount claimed by them was already taken as cenvat credit in the revised ER-1 return furnished under the existing law and they were lawfully eligible to take the same into GST as ITC through TRAN-1. It is seen from the record that the appellant had claimed refund under Section 142(9)(b) of the CGST Act only to the extent of Rs.8,31,85,437/- out of the amount of Rs.13,18,64,024/- claimed as additional CENVAT Credit in the revised ER-1 return. I find there is no provision in law to carry forward partial amount of Cenvat credit into the GST regime through Tran-1 after the revision of ER-1 return. Transitional provision under GST Act does not envisage transfer of part credit to Electronic credit ledger after the appointed day. It is a fact on record that the appellant being in the business for long time and large taxpayer unit, clearly knows the exact



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quantum of cenvat credit available to him, however, deliberately in order to get the amount in cash they had filed the refund claim which is not eligible as per the transitional provisions. Therefore, looking into the facts and circumstances case, I find that the respondent has correctly held that the amount rejected shall not be admissible as input tax credit under Section 142(9)(b) of CGST Act, 2017 after rejecting the refund claim.

12. Further, the appellant argued that it is a settled principle that the eligibility of Cenvat credit cannot be questioned by a refund sanctioning authority when no separate proceedings have been initiated for recovery of such credit is not acceptable. In this regard, it is observed that the appellant had claimed refund under Section 142(9)(b) of the CGST Act only to the extent of Rs.8,31,85,437/- out of the amount of Rs. 13,18,64,024/- claimed as additional CENVAT Credit in the revised ER-1 return. It is pertinent to point out that the balance credit of Rs.4,86,78,587/-, was neither claimed as refund nor transitioned into the GST regime. At this juncture, it is the responsibility of the appellant to produce the documents on which the credit was availed and required to explain the difference as per ER-1 returns for verification of admissibility of the refund amount claimed. The respondent has to verify the eligibility of cenvat credit. The respondent had reminded the appellant repeatedly for documents, wherein the appellant failed to substantiate. The Respondent offered personal hearing also, thus followed the principles of Natural justice. This fact was recorded by the respondent while passing the impugned order. Therefore, I do not find any reason to disagree with the respondent on this account.

13. With regard to the case laws relied upon by the appellant, I find that the same could not be made applicable to the instance case in view of the facts and circumstances different from the facts of the present case, hence not considered.

14. In view of the facts as discussed above and



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considering totality of facts of the case, I do not find any infirmity in the impugned order and find the appeal is liable for rejection. Accordingly I pass the following order.

15. For the reasons stated above, the order passed by the respondent is upheld in to and the appeal filed by the appellant is rejected.”

4. The Petitioner ought to have escalated the issue further before the GST Tribunal under Section 112 of the CGST Act. However, as on date, the GST Tribunal though has been notified, it has not yet been constituted. The Writ Petition is of the year 2021. Therefore, this Writ Petition is taken up for final hearing and disposed on merits as pleadings are complete and since there are no disputed question of facts.

5. Arguments were advanced by the learned counsel for the Petitioner and the learned counsel for the Respondents.

6. The dispute in this Writ Petition has arisen out of refund claims filed by the Petitioner on **26.07.2018** for a sum **Rs.8,31,85,437/-** under Section 142(9)(b) of the CGST Act with the State GST Office. The refund claims were filed on the strength of revised return in ER-I filed by



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the two divisions of the Petitioner namely (i) Parts Distribution Centre and (ii) Manufacturing Unit of the Petitioner on **28.07.2017** and **29.07.2017** respectively.

7. The Petitioner is a major automobile manufacturer which has both a manufacturing divisions where automobile parts are manufactured and sold and a spare parts where manufactured parts are packed, which is deemed to be a “manufacturing activity” within the meaning of Section 2(f)(iii) of the Central Excise Act, 1944. Separate Return were filed by the Petitioner for each of the divisions namely, the Manufacturing Division and the Parts Distribution Division.

8. The background of the Impugned Order is the Return filed by the Petitioner for the Parts Distribution Centre in the month of June 2017 on **08.07.2017** and a Return filed by the Petitioner in month of June 2017 on **10.07.2017** for the Manufacturing Unit.

9. The facts on record indicate that the Petitioner had transitioned the CENVAT credit which was availed originally in the regular Return



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filed by the Petitioner on **08.07.2017** and **10.07.2017** for the Parts Distribution Division and Manufacturing Division respectively. The credit was also transitioned in terms of Section 140(1) of the CGST Act, 2017.

10. It appears in the Return filed on **08.07.2017** and **10.07.2017**, the Petitioner had failed to avail CENVAT credit on certain inputs (goods) and inputs services and thus filed two revised Return of Income on **28.07.2017** for the Parts Distribution Centre and on **29.07.2017** for the Manufacturing Unit in accordance with Rule 12(8) of the Central Excise Rules, 2002.

11. The Petitioner had taken a bonafide stand in terms of Section 142(9)(b) of the CGST Act that the Petitioner was indeed entitled to refund of the input credit that was admissible pursuant to the revised Return of Income filed by the Petitioner on **28.07.2017** and **29.07.2017** which could not be transmitted under Section 140 of the CGST Act.



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12. The Petitioner was initially assessed by the State Authorities in terms of a Circular of the Board pursuant to the recommendations of the GST Council. As refund of CENVAT credit could not be transitioned under the revised return in terms of Section 140 of the Act, it could only be refunded back in terms of Section 142(9)(b) of the CGST Act, 2017. Therefore, refund claim was filed by the petitioner on 26.07.2018. The refund claim dated **26.07.2018** filed by the Petitioner was transferred by the State Authority on 14.10.2019 to the Central Authorities which was received on 17.10.2019 by the Respondents, the Central Excise Authorities.

13. Thereafter, the 1st Respondent issued a **Show Cause Notice** bearing **No.01/2020-RF** dated **30.04.2020** to the Petitioner. Relevant portion of the Show Cause Notice dated 30.04.2020 issued by the 1st Respondent reads as under:-

“9. Whereas Section 142(9)(b) of CGST, any amount of cenvat credit is found to be admissible after the revision of return filed under the existing law within the time limit for such revision, the same shall be refunded in cash. In the instant case, the amount of refund claimed by the taxpayer was already taken by him as Cenvat credit in the revised return furnished under the existing law and they



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were lawfully eligible to take the same into GST as ITC through TRAN 1. However, it appears that in order to get the amount of Cenvat credit in cash they have filed the refund claim which is not eligible as per transitional provisions. The transitional provisions for refund of admissible Cenvat credit is available only for those Cenvat credit which became admissible after the filing of revised return under existing law. It is not so in the instant case. They should have taken forward the Cenvat Credit as per revised ER-1 return into GST through TRAN 1 as ITC which they failed to do. Hence, it appears that the taxpayer is ineligible for the refund claimed.

10. Therefore, M/s Ford India P Ltd., Kilkaranai Village, Maraimalai Nagar - 603204 are hereby directed to show cause to the Assistant Commissioner of Central Tax, Maraimalai Nagar Division, No.40, Ranga Colony, RajaKilpakkam, Chennai - 600073 within 30 days of receipt of this notice as to why the refund claim of Rs.8,31,85,435/- filed on 26-07-2018 with State Authorities under Section 142 (9) (b) of the CGST Act, 2017 and received in this office on 17.10.2019 should not be rejected for the reasons stated above.

11. The taxpayer are further directed to produce at the time showing cause all the evidences upon which they intend to rely in support of their defense. They are also required to state in their reply as to whether they wish to be heard in person before the case is adjudicated. If no mention is made about this in their written reply, it would be presumed that they do not desire a personal hearing.

12. If no cause is shown against the action proposed to be taken as mentioned above within 30 (thirty) days from date of receipt of this notice, or having shown cause, if they do not appear in person for personal hearing before the adjudicating authority when the case is posted



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for hearing, the case will be decided ex-parte on the basis of evidences available on record.”

14. The Petitioner replied to the aforesaid Show Cause Notice dated 30.04.2020 which culminated in **Order-in-Original** bearing **No.160/2020 (RF)** dated **15.09.2020** passed by the 1st Respondent. By the aforesaid order, the refund claim of the Petitioner was rejected by the 1st Respondent with the following observations:-

“The refund claim of cenvat credit filed by M/s.Ford India Private Limited for an amount of Rs.8,31,85,435/- is hereby rejected and the amount rejected shall not be admissible as input tax credit under Section 142(9)(b) of CGST Act, 2017.”

15. Thus, the Petitioner filed a further appeal before the 2nd Respondent/Joint Commissioner of Central Tax (Appeals-II) who rejected the appeal of the Petitioner vide impugned **Order in Appeal No.22/2021-JC (GSTA-II)** dated **17.02.2021**. Relevant portion of the Impugned Order dated 17.02.2021 of the 2nd Respondent has been already extracted in Paragraph No.3 of this Order.



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16. Arguing on behalf of the Petitioner, the learned counsel for the Petitioner submitted that the refund claim that was filed by the Petitioner on **26.07.2018** was in time and in accordance with the existing law, as defined in Section 248 of the CGST Act read with Section 11(b) of the Central Excise Act, 1944 i.e., within one year from the relevant date and therefore the denial of the refund claim of the Petitioner by the Respondents on the ground of limitation is not justified.

17. On merits, the learned counsel for the Petitioner submits that the credit was availed in the revised Return of Income filed by the Petitioner under Rule 12(8) Central Excise Rule, 2002. It is stated that since the credit was validly availed by the Petitioner under the self assessment it cannot be denied by the Respondents.

18. That apart, the learned counsel for the Petitioner would further submit that although the Petitioner had claimed differential credit of **Rs.13,18,64,024/-**, the refund claims filed by the Petitioner on 26.07.2018 were restricted only to **Rs.8,31,85,437/-** in accordance with Section 140(1) of the CGST Act.



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19. It is therefore submitted that the impugned orders passed by the Respondents rejecting the refund claims of the Petitioner are liable to be interfered with and therefore, the refund claims filed by the Petitioner deserve to be allowed.

20. In support of the plea, the learned counsel for the Petitioner placed reliance on the decision of the Hon'ble Supreme Court in the following cases:-

- “(i) **Collector of Central Excise, Kanpur Vs. Flock (India) Pvt Ltd**, reported in (2000) 6 SCC 650;
(ii) **Priya Blue Industries Ltd Vs. Commissioner of Customs (Preventive)** reported in (2005) 10 SCC 433 and
(iii) **ITC Limited Vs. Commissioner of Central Excise, Kolkata IV** reported in (2019) 17 SCC 46.”

21. It is submitted that once the Return of Income have been assessed under the self assessment, as was contemplated under the provisions of the Central Excise Act, 1944 read with Central Excise Rules, 1944 and the revised Return of Income have been filed by the Assessee, the question of denial of CENVAT credit long after expiry of limitation cannot be countenanced.



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22. In this connection, the learned counsel for the Petitioner placed reliance on Rule 6 of the Central Excise Rules, 2002 as per which the Assessee shall himself assess the duty payable on any excise through goods. It is submitted that even otherwise there is no discussion as to the denial of input tax credit in the impugned orders of the 1st and 2nd Respondents. It is further submitted that all that the Respondents have stated is that the refund claims are belated and therefore the refund claim cannot be allowed and that at best the Petitioner could be transmitted under Section 140(1) of CGST Act.

23. The learned counsel for the Petitioner also placed reliance on the decision of the Division Bench of Delhi High Court in ***BT (India) Private Limited Vs. Union of India and Anr*** rendered on **06.11.2023** in **W.P.(C) No.13968 of 2021**. Relevant portion of the said decision reads as under:-

“66. In our considered view, unless the self-assessed return, as submitted had been questioned, reopened or re-assessed and the assertion of the petitioner of the services rendered by it qualifying as an “export of service” questioned or negated in accordance with the procedure prescribed under the Act, its claim for refund could not have been negated. As was observed by the Supreme Court in ITC



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Limited, a self-assessed return also amounts to an “assessment” and unless it is varied or modified in accordance with the procedure prescribed under the relevant statute, the same cannot possibly be questioned in refund proceedings. As the Supreme Court had held in the decisions aforesaid, the authority while considering an application for grant of refund neither sits in appeal nor is it entitled to review an assessment deemed to have been made. In fact, the Supreme Court in ITC Limited had described refund proceedings to be akin to execution proceedings.”

24. Opposing the prayer, the learned counsel for the Respondents submits that the Petitioner restricted the refund claim only to the extent of **Rs.8,31,85,437/-** out of **Rs.13,18,64,024/-** being the differential input of CENVAT credit that was availed in the revised Return of Income filed by the Petitioner on the two dates mentioned above.

25. It is submitted by the counsel for Respondents that this credit would be at best a credit that is available under Section 140(5) of the CGST Act i.e., eligible duty on taxes in respect of input or input services received on or after the appointed date but the duty of tax which has been paid by the supplier under the existing law within such time and such manner as may be prescribed.



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26. It is therefore submitted by the learned counsel for Respondents that this is not a case where the Petitioner was entitled to file a refund claim purportedly under Section 142(9)(b) of the CGST Act, rather, the Petitioner could have transmitted the aforesaid amount, if the Petitioner was entitled to transmit such credit.

27. That apart, it is submitted by the learned counsel for Respondents that several communications were sent to the Petitioner to justify the availing of the differential CENVAT credit in the revised Return of Income filed on the respective dates i.e., on **28.07.2017** for the Parts Distribution centre and **29.07.2017** for Manufacturing Unit.

28. It is further submitted by the learned counsel for Respondents that till date, the Petitioner has not produced any documents to substantiate the same and therefore even on this count, the challenged to the Order passed by the 1st Respondent impugned in this Writ Petition is without merits and is therefore liable to be dismissed.



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29. I have considered the arguments advanced by the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondents.

30. No doubt, the Petitioner was entitled to file a revised Return of Income on **28.07.2017** for the Parts Distribution Division and on **29.07.2017** for Manufacturing Division for the last month within the time stipulated under Rule 12(8) of the Central Excise Rules, 2002.

31. Having filed a revised Return of Income on **28.07.2017** and **29.07.2017**, the Petitioner had claimed the following amounts as the differential CENVAT credit for the respective units. Cenvat Credit pertaining to Manufacturing Unit of the Petitioner are as follows:-

<i>Particulars</i>	<i>Original ER-1 (I)</i>	<i>Revised ER-1 (ii)</i>	<i>Differential Credit (II-I)</i>
Excise Duty	1,56,04,70,282	1,63,17,58,957	7,12,88,675
Service Tax	12,25,56,546	17,43,87,510	5,18,30,964
Additional Duty of customs	5,41,847	12,48,517	7,06,670
Total for Manufacturing Unit (A)	1,68,35,68,675	1,80,73,94,984	12,38,26,309



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32. The Cenvat Credit pertaining to Parts Distribution Division of the Petitioner are as follows:-

<i>Particulars</i>	<i>Original ER-1 (I)</i>	<i>Revised ER-1 (ii)</i>	<i>Differential Credit (II-I)</i>
Excise Duty	10,18,54,615	10,98,75,835	80,21,220
Service Tax	1,37,63,872	1,37,80,367	16,495
Total for Parts Distribution centre (B)	11,56,18,487	12,36,56,202	80,37,715
Total Credit (A+B)	1,79,91,87,162	1,93,10,51,186	13,18,64,024

33. The reasons forthcoming in the Affidavit filed in support of the Writ Petition is that the Petitioner had inadvertently missed out certain amounts in the original Return filed in ER-1 on **08.07.2017** and therefore the Petitioner filed revised Return on **28.07.2017** for the Parts Distribution Division and **29.07.2017** for Manufacturing Division.

34. It is further noticed that the refund claim that was filed by the petitioner on **26.07.2018** was restricted to the amount of **Rs.8,31,85,437/-** and no refund claim was filed claiming for the balance amount of **Rs.4,86,78,587/- (Rs.13,18,64,024/- (-) Rs.8,31,85,437/-)**.



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35. The stand of the Respondents that the refund claim of the Petitioner was time barred cannot be countenanced. The fault lies in the procedural system that was put in place after the implementation of GST laws with effect from **01.07.2017**.

36. Several certain corrections have been made in the procedures after deliberations were held in this behalf in the GST councils. Ultimately administrative decisions were taken for allocating Assessee partly before the Central Authorities and partly before the State Authorities. As far as the Petitioner is concerned, the Petitioner was assessed by the State Authority.

37. However, by virtue of Intra-Departmental Circular, the refund claim of the Petitioner was to be transferred to the Respondents, namely the Central Excise Authorities. As the refund claim of the Petitioner was filed on time i.e., within one year from the relevant date as is contemplated under Section 11B of the Central Excise Act, 1944, it cannot be said that the refund claim of the Petitioner was time barred for the purpose of Section 142(9)(b) of the CGST Act.



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38. The Respondents have come to a conclusion that the refund claims filed by the Petitioner were time barred. Both the Respondents i.e., the 1st Respondent/ the Original Authority and the 2nd Respondent/Appellate Authority have given their own reasons to reject the refund claims on erroneous reading of the facts and circumstances of the case.

39. Therefore, the objections of the Respondents and the reasons given in the impugned orders of the 1st and 2nd Respondents to that extent that the refund claim of the Petitioner was time barred is overruled. It is held that the refund claims filed by the Petitioner were indeed filed within the time stipulated under the provisions of the Act.

40. The correct method would have been to call for the documents and examine whether the Petitioner had indeed filed a correct revised Return as the Input Tax Credit i.e., availed provisionally which can be recalled or reversed if Input Tax Credit has been wrongly availed by the Assessee in the revised Return of Income filed by the Assessee. This



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exercise has not been done by the Respondents, the Central Excise authorities.

41. Perhaps this is the reason why the circulars have been issued by the Central Board of Indirect Taxes and Customs, whereby, it is clearly stated that an Assessee who is otherwise assigned to a State Authority, in so far as certain issues are concerned, the Authority concerned with the central enactment are to examine the records as there would be irregularities under the existing law as defined in Section 248 of the CGST Act.

42. Therefore, I am of the view, the impugned orders of the 1st and 2nd Respondents are liable to be quashed and the case has to be remitted back to the 1st Respondent to pass a fresh order by scrutinising the revised Return of Income filed by the Petitioner by calling upon the Petitioner to furnish the respective invoices on the strength of which, the differential Input Tax Credit of **Rs.13,18,64,024/-** was availed by the Petitioner and basis on which the amount of refund claim was restricted to the extent of **Rs.8,31,85,437/-** by the Petitioner.



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43. This exercise shall be completed by the Respondents within a period of six months from the date of receipt of a copy of this order. The Petitioner shall co-operate with the Respondents, failing which, the Respondents are at liberty to reject the refund claims of the Petitioner. It is made clear that the Petitioner should co-operate by furnishing all the invoices on the strength of which the differential Input Tax Credit was availed by the Petitioner in the revised Return of Income filed by the Petitioner.

44. Therefore, this Writ Petition stands allowed by way of remand.

No costs.

25.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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C.SARAVANAN, J.

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