

23.07.2025
Item No.3
Ct. No.01
SM/SG

MAT/969/2025
with
IA NO: CAN/1/2025

R.P. TECHSOFT INTERNATIONAL PVT. LTD.
VS.
THE DEPUTY COMMISSIONER OF REVENUE
(SGST OFFICER) AND ORS.

Mr. Somak Basu, Adv.
Mr. Swagato Kabiraj, Adv.

...For the Appellant

Mr. Uday Sankar Bhattacharya, Adv.
Mr. Tapan Bhanja, Adv.

...For the CGST

Mr. Md. T.M. Siddiqui, Adv.
Mr. Tanoy Chakraborty, Adv.
Ms. Sumita Shaw, Adv.
Mr. Saptak Sanyal, Adv.

...For the State

1. This intra-court appeal by the writ petitioner is directed against the order dated 9th June, 2025, in WPA No.2488 of 2025. The writ petition was filed by the appellant challenging an order passed by the Deputy Commissioner of Revenue, Salt Lake Charge (hereinafter referred to as 'the State Tax Authority) dated 27th February, 2023, by which the transitional credit claimed by the writ petitioner was found to be inadmissible and the learned Single Bench non-suited the appellant on the ground of availability of alternate remedy before the Appellate authority and the writ petition cannot be entertained.

2. Aggrieved by the same, the appellant has preferred this appeal.
3. We have elaborately heard the learned advocates appearing for all the parties.
4. It is settled legal principle that existence of an alternate remedy is not always a bar for the Constitutional Courts to exercise jurisdiction under Article 226 of the Constitution and the Hon'ble Supreme Court has carved out certain exceptions, - one of which is when the authority has acted without jurisdiction and the other is when the order is passed in violation of principles of natural justice etc. If the fact of the case on hand is tested on the anvil of these exceptions and if the case falls under any one of the exceptions, the Writ Court can exercise jurisdiction. The transitional credit claimed by the writ petitioner has been denied by the State Tax Authority wholly relying upon the Verification Report submitted by the Central Tax Authority dated 20th February, 2023, sent vide e-mail dated 21st February, 2023, setting out certain reasons for denying transitional credit to the appellant. The procedure which has to be followed in such cases has been laid down by issuance of a circular/guideline by the Central Board of Indirect Taxes and Customs dated 10th November, 2022. The circular/guideline came to be issued pursuant to the order passed by the

Hon'ble Supreme Court in ***Union of India vs. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018*** dated 22nd July, 2022 and 2nd September, 2022. The relevant clauses in the guideline are quoted hereinbelow:-

*“5.3.5 In respect of verification done by the counterpart officer, after verification, he will prepare a verification report, in the format detailed in **Annexure-II** of this circular, specifying the amount of transitional credit which may be allowed to be credited to the electronic credit ledger of the applicant and the amount which is liable for rejection, along with detailed reasons/ grounds on which the said amount is liable to be rejected. Such duly signed verification report shall be sent by the counterpart officer to the jurisdictional tax officer at the earliest, though generally not later than ten days from the date of receipt of the request from the jurisdictional officer. In case, where the adjudication or appeal proceedings in respect of TRAN-1/TRAN-2 related matter are pending/ concluded against the applicant, the counterpart officer shall categorically bring out the relevant facts in his/her verification report along with his detailed findings, admissibility/ inadmissibility, reasons of inadmissibility thereof and the copy of the relevant notice and/or orders.*

5.3.6 For the purpose of verification of the claim of the transitional credit, the jurisdictional tax officer as well as the counterpart tax officer, if required, may call for relevant records including requisite documents/returns/invoices, as the case may be, from the applicant.

5.3.7 After receiving the verification report from the counterpart officer, the jurisdictional tax officer shall decide upon the admissibility of the credit claimed by the applicant. In case the jurisdictional tax officer finds that the transitional credit claimed by the applicant is partly or wholly inadmissible as per the provisions of the Act and the rules thereof, then a notice

shall be issued by the jurisdictional tax officer to the applicant preferably within a period of seven days from the receipt of report from the counterpart officer, seeking explanation of the applicant as to why the said credit claimed by him should not be denied wholly/partly, as the case may be. The applicant shall also be provided an opportunity of personal hearing by the jurisdictional tax officer in such cases. If required, the jurisdictional tax officer may seek comments of the counterpart officer on the submissions made by the applicant in so far as the said submission relates to the tax (central or State) being administered by such counterpart officer.

5.3.8 *After considering the facts of the case, including verification report received from the counterpart officer, submissions made by the applicant and the comments, if any, of the counterpart officer on the same, the jurisdictional tax officer shall proceed to pass a reasoned order, preferably within a period of fifteen days from the date of personal hearing, specifying the amount of transitional credit allowed to be transferred to the electronic credit ledger of the applicant and upload a pdf copy of the said order, on the common portal for crediting the amount of allowed transitional credit to the electronic credit ledger of the applicant. In any case, such order shall be passed within a period of 90 days from 01.12.2022 i.e. up to 28.02.2023.”*

5. The above guideline stipulates how the State Tax Authority has to proceed pursuant to the verification report drawn by the Central Tax Authority. On going through the above guideline, more particularly clause 5.3.7, the State Tax Authority, who has been referred to as counterpart officer, the jurisdictional tax officer, which is the State Authority, has independent power to decide as to how admissibility or otherwise transitional credit claimed by the assessee. On

reading of the order impugned in the writ petition dated 27th February, 2023, we find State Tax Authority was of the opinion that he is bound by the opinion expressed in the verification report of the Central Tax Authority. The guideline framed by the Central Board of Indirect Taxes and Customs speaks otherwise. If such interpretation is not given then clause 5.3.7 of the guideline would become redundant and this obviously is not the purpose for issuing of guideline. Therefore, the State Tax Authority should consider the verification report as of the Central Tax Authority as an information, furnish copy thereof to the dealer/RTP, invite their objections and request for comments to be furnished by the Central Tax Authority on the objections raised by the RTP and thereafter afford an opportunity of personal hearing to the RTP and then take a decision by passing a reasoned order. The State Tax Authority has followed clause 5.3.7 read with clause 5.3.8 upto a particular point that is upto the stage of issuing a notice and affording an opportunity to the writ petitioner to submit their rebuttal which they have submitted on 24th February, 2023. Thereafter, without taking independent decision on the matter and without considering the grounds raised in the rebuttal by the appellant/writ petitioner, the State

Tax Authority appears to have been bound over the verification report of the Central Tax Authority.

6. Therefore, the order passed by the Deputy Commissioner of Revenue, Salt Lake Charge dated 27th February, 2023, has to be held to be in violation of principle of natural justice and not in accordance with the policy guideline framed by the Central Board. Therefore, the same calls for interference and the Writ Court is well within its jurisdiction to exercise its powers.
7. For the above reason, the appeal is allowed and the order passed in the writ petition is set aside. The order dated 27th February, 2023, passed by the Deputy Commissioner of Revenue, Salt Lake Charge, is also set aside and the matter is remanded to the said authority to take note of the guideline, preferably clauses 5.3.5, 5.3.6, 5.3.7 and 5.3.8, afford a fresh opportunity of personal hearing to the appellant/writ petitioner considering all the objections that they have raised including the oral submissions that they may make as well as the judicial precedents on which they may rely upon and thereafter proceed to pass a speaking order on merits and in accordance with law.
8. The above direction be complied with within a period of two months from the date of receipt of server copy of this order.

9. No order as to costs.

10. Connected application stands disposed of.

11. Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

[T.S. SIVAGNANAM]
CHIEF JUSTICE

[CHAITALI CHATTERJEE (DAS), J.]