Form No. J.(2)
Item No.10

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 11.03.2025
DELIVERED ON: 11.03.2025

CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

M.A.T. 2333 of 2023
With
IA No. CAN 1 of 2023
Kunjal Synergies Private Limited & Anr.
Versus
The Assistant Commissioner of CGST & CX, Park Street Division & Ors.

Appearance:-
Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Jitesh Shaw

.......For the Appellants

Mr. Vipul Kundalia
Mr. Soumen Bhattacharjee
Mr. Anindya Kanan
Mr. D. Chaudhuri

........For the Union of India

Mr. Kaushik Dey
Mr. Abhradip Maity

.....For the Respondent

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the writ petitioners is directed against the order dated 28th November, 2023 in W.P.A. 23893 of 2023. The appellants had filed writ petition praying for issuance of a Writ of Mandamus to quash/set aside the show-cause notice dated 18th September, 2023 issued by the Assistant Commissioner of CGST & CX, Park Street Division, Kolkata South Commissionerate. Further, the petitioners sought for a direction upon the respondent no.1 to ascertain as to why the proceedings, which had been initiated since 2018 has resulted in issuance of the impugned show-cause notice dated 18th September, 2023 without considering any of the submissions of the appellants/writ petitioners from time to time.

2. The learned Writ Court by the impugned order opined that the appellants/writ petitioners should file a reply to the show-cause notice and thereafter, the authority should adjudicate the show-cause notice and pass a reasoned order. Being aggrieved by such order, the appellants have filed the present appeal.

3. We have elaborately heard the learned advocates for the parties.

4. The facts of the case in a nutshell are as hereunder:-

The appellants are engaged in the business of trading and import of Ethers, Ether Alcohols, Ether Phenols falling under CTH-2909 of the Customs Tariff of India as made applicable to GST and is registered with the GST department. The appellants were registered as an assessee under the earlier service tax regime as well as the Central Excise regime and they migrated to the GST regime with effect from 1st July, 2017 and were allowed to file TRAN 1 Form for carrying forward of closing balance of CENVAT credit of the erstwhile regime to the new GST regime and the same was filed by the appellants on 9th November, 2017. Even prior to filing of the Form TRAN 1 on 9th November, 2017, the appellants had informed the Superintendent of Service Tax by letter dated 31st October, 2016 stating that during the audit for the financial year 2015-16, it was observed that the appellants have a balance of Rs.41,55,632.00/- on account of unavailed CENVAT credit. It was explained that the same has accrued and has not been utilised as Input Service Tax in the financial year 2015-16 and therefore, the appellants have claimed the said amount as a part of Opening Balance of CENVAT Credit in the Service Tax Return filed for April - September, 2016. The appellants requested the Department to allow the same as CENVAT Credit in the current year 2016-17. Much thereafter, a letter was issued to the appellants calling for various documents for the verification of the transitional credit. This was furnished by the appellants to the authority on 5th January, 2018 followed by another communication addressed to the Assistant Commissioner dated 9th January, 2018. After about more than eight months, another communication was sent by the Superintendent dated 11th September, 2018 referring to their earlier reply and pointing out certain issues and requested further reply from the appellants. This was complied with by the appellants by reply dated 18th September, 2018 enclosing the statement of the CENVAT Credit claimed. Subsequently, several such communications have been sent to the writ petitioners and promptly, the appellants/writ petitioners have also submitted replies. However, the fact remains that the authority concerned, who started the verification process ever since 2018, did nothing in the matter to take the issue to the subsequent stage by issuance of show-cause notice or adjudicating the matter and all it remained was that intimation was given to the writ petitioners calling for certain documents under the guise of verification and the petitioners had been reiterating the same stand and enclosing which were submitted earlier or certain other new documents, which were called for. This process did not abate and continued till October, 2022 when the CGST authority issued a similar letter with regard to verification of payments/reversal and clarification.

5. Subsequently, a notice was issued in GST DRC 01A dated 2nd March, 2023 for which the appellants had filed a reply on 9th March, 2023.

6. Apart from other things in the reply, the appellants contended that the jurisdiction of the authority to conduct TRAN 1 investigation is challenged by the appellants as there has been TRAN 1 verification conducted by the Department since 2018 and there was no demand raised in any of the verification and the details were given in a tabulated format. Therefore, the appellants contended that the notice in GST DRC 01A dated 2nd March, 2023 has been issued without considering any of the objections, which have been filed by the appellants at the stage of verification of TRAN 1 and raising a demand after four years of continuous communication with the Department cannot be held to be a valid exercise and the notice was liable to be withdrawn as being without jurisdiction.

7. Further, the appellants pointed out that when it has been admitted by the Department that input tax credit availed in Table 7 was eligible for input tax credit to the appellants and further, reference of sub-table of table 7 was incorrectly filed, the question of availment of ineligible Input Tax Credit by the appellants does not arise and the DRC proceedings are liable to be dropped.

8. Thus, the legal question to be answered in the instant case is whether the show-cause notice dated 18th September, 2023 issued under Section 73 of the CGST Act was within the jurisdiction of the authority alleging that there is an irregularity in the transitional credit of CGST availed under TRAN 1.

9. We need not labour much to find an answer to the above mentioned query as identical issue was decided by the Hon'ble Division Bench of the High Court of Jharkhand in the case of ***Usha Martin Limited vs. Additional Commissioner, Central GST and Excise, Jamshedpur and Ors.*** reported in ***[2024] 124GSTR 396 (Jha.) : MANU/JH/1261/2022***. In paragraph 9 of the said judgment, the contention raised by the Department has been noted and in fact, the learned Senior Standing Counsel appearing for the respondents/Department has made identical submission before us to sustain the impugned show-cause notice.

10. The Hon'ble Court firstly considered as to the scope of entertaining a writ petition under Article 226 of the Constitution challenging a show-cause notice when the normal course to be adopted is to submit a reply and face the adjudication proceedings. The Court, after taking note of the several decisions of the Hon'ble Supreme Court held that there is always an exception to the rule of alternate remedy but when the orders of proceedings are wholly without jurisdiction, there is an exception drawn and writ petitions were held to be maintainable.

11. Thus, when a jurisdictional issue is being canvassed before us, the alternate remedy provided under the CGST Act would not operate as a restriction for this Court to decide upon the jurisdiction of the respondents to issue the show-cause notice invoking the provisions of the CGST Act.

12. The Court then proceeded to take note of Sections 140 and 174 of the CGST Act, where section 140 deals with the transitional arrangements for input tax credit and noted the purpose for introducing a transitional provision. The relevant portion of the judgment is quoted hereinbelow:

> *"**17.*************** It is in this light that the transitional provisions incorporated under Chapter-XX have to be understood. The C.E.A., 1944 and the Finance Act, 1994 ceased to exist with effect from 1st July, 2017 upon coming into force of the C.G.S.T. Act and the G.S.T. regime. Under the existing law, CENVAT Credit admissible to any registered Tax payer could have been utilized as input tax credit for discharge of tax liability. The same would have remained idle or unutilized if such transitional provisions were not provided for under the G.S.T. regime. Therefore, the legislature provided for transitional arrangement for input tax credit under the C.G.S.T. Act i.e. CENVAT Credit or under the State G.S.T. Act i.e. input tax credit as are admissible at the time of transition under the existing Vat laws or Entry Tax Act etc. The circumstances under which it is permissible to transition such credit are provided under Section 140 proviso itself which have been quoted herein above. Clause (i) to the Proviso indicates that the said amount of credit if it is not admissible as input tax credit under this Act meaning thereby the C.G.S.T. Act, the registered person shall not be allowed to take credit of those CENVAT Credit. The circumstances in which no registered person shall be entitled to take credit of any input tax in respect of any supply of good or services or both are provided under Section 16(2) of the C.G.S.T. Act under Chapter V "Input Tax Credit", which is quoted hereunder."*

13. After discussing about the transitional provisions, the Court proceeded to examine the next question i.e. whether a registered person could transition inadmissible CENVAT Credit of the existing regime to the G.S.T. regime under section 140 of the C.G.S.T. Act without any check or proceeding against him. In this regard, the Court noted section 174 of the C.G.S.T Act and other Constitutional provisions and held: "*it is obvious the new regime had to make provisions for the transactions which remained incohate under the existing law. It is also a well-settled legal position that on account of the new legislation the implementation of the G.S.T. regime could not be left to a realm of uncertainty. For a violation under the existing law, parallel proceedings could not be conducted under the existing law at the behest of jurisdictional officer and at the same time under the new law at the instance of another jurisdictional officer of the G.S.T. Act.*"

14. Ultimately, the Court held: *"that in respect of previous proceedings for such contravention, the cases have been kept in call book and in some of them the learned CESTAT has stayed the recovery of the tax……" "If proceedings for transition of CENVAT Credit alleged to be inadmissible is permitted to be carried under the C.G.S.T. Act, it may lead to uncertainty not only in the minds of the ordinary citizen but also in the minds of the Tax authorities. In some cases a jurisdictional proper officer under the C.G.S.T. Act may initiate proceedings under the provisions of the C.G.S.T. Act for such contravention. In other cases, the competent jurisdictional officer may initiate proceedings under the existing law i.e. the C.E.A. and Finance Act for the same contravention in view of the repeal and saving provisions under Section 174 of the C.G.S.T. Act and such a course cannot be countenanced in law."*

15. Thus, while answering the question, it has to be considered whether the initiation of proceedings by the respondent no.1 therein under Section 73 of the CGST Act for alleged contravention of the Central Excise Act and Finance Act read with CENVAT Credit Rules against the petitioners therein by filing TRAN 1 in terms of Section 140 of the CGST Act for transition of CENVAT credit as being inadmissible under the existing law or beyond his jurisdiction. Accordingly, the adjudication proceeding, which was impugned in the said writ petition, was quashed. However, the respondent authorities were granted liberty to initiate proceedings under the provisions of the existing law i.e. Central Excise Act, 1944, Finance Act, 1944 read with CENVAT Credit Rules, 2004 against the petitioner therein for the relevant tax period in accordance with law.

16. The expression "in accordance with law" is added with the purpose because the liberty should not be construed to be a liberty de hors the provisions of law.

17. The learned advocate appearing for the appellants submitted that information was sought for under the provisions of the Right to Information Act, 2005 as to whether any appeal has been filed against the judgment passed in the case of

Usha Martin Limited (supra) and a reply was received on 6th February, 2024 stating that the department has not filed any appeal against the said judgment. However, we note that the Hon'ble Division Bench of the High Court of Jharkhand in the case of ***Steel Authority of India Limited Vs. The State of Jharkhand*** reported in ***[TS-49-HC (JHAR)-2025-GST]*** had occasion to consider more or less an identical fact as the case on hand and followed the decision in ***Usha Martin Limited (supra)*** and quashed the adjudication order, which was impugned therein and also issued consequential directions. However, the liberty for the authority was preserved as per the observations made in ***Usha Martin Limited (supra)***.

18. In the light of the above discussions, we have no hesitation to hold that the impugned show-cause notice is without jurisdiction. In the result, the appeal is allowed along with the connected application (IA No. CAN 1 of 2023). The order passed by the learned Single Bench is set aside. Consequently, the writ petition is allowed and the impugned show-cause notice is quashed.

19. However, the respondent authorities are at liberty to initiate proceeding under the provisions of the then existing law i.e. the Finance Act, 1944 as amended from time to time read with CENVAT Credit Rules, 2004 against the appellants for the relevant tax period. However, such proceedings should be in accordance with law.

20. No costs.

21. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)

Pallab/KS AR(Ct.)