PRANESH NANDIWADEKAR
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15536 OF 2023

M/s. Johnson Matthey Chemicals)
India Pvt. Ltd.)
Plot No.6A, MIDC Taloja Road,)
Taloja, Navi Mumbai,)
Raigad – 410208)
Through its Authorized Representative)
Mr. Ketan Gala,)
Finance Controller) **...PETITIONER**

Versus

1. Union of India)
Through the Ministry of Finance)
Department of Revenue,)
North Block, New Delhi.)

2. Central Board of Indirect Taxes)
and Customs)
GST Policy Wing,)
Ministry of Finance)
Department of Revenue)
North Block, Central Secretariat)
New Delhi – 110001.)

3. The Deputy Commissioner)
Division VI, COST & C. Ex.)
Raigad, Commissionerate)
2nd Floor, Plot No.1,)
Sector 17, Khandeshwar,)
Navi Mumbai – 410206.) **...RESPONDENTS**

Ms. Priyanka Rathi a/w Mr. Prasad Avhad i/by Mr. Kuldeep U. Nikam for the Petitioner.

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Mrs. Neeta Masurkar a/w Mr. Harshad Shingnapurkar for the Respondents.

CORAM: M.S. Sonak &
Jitendra Jain, JJ.

RESERVED ON: 1 July 2025
PRONOUNCED ON: 8 July 2025

JUDGMENT(Per Jitendra Jain, J.) :-

1. Rule. Rule made returnable forthwith. By consent, heard finally at the admission stage.

2. This petition under Article 226 of the Constitution of India challenges an order passed by respondent no.3 whereby the petitioner's revised TRAN-1 Form dated 28 November 2022 filed under Section 140 of the Central Goods and Service Tax Act, 2017 ('CGST Act') has been rejected on the ground that the petitioner has not revised its excise return for the period prior to 1 July 2017 electronically and consequently, the credit of duties cannot be transitioned.

Brief Facts :-

3. The petitioner is engaged in the business of manufacture and sale of industrial catalysts. On 26 August 2017, the petitioner filed its GST Form TRAN-1 for transition of credit of Rs.4,31,30,239/- as per Section 140 of the CGST Act. However, subsequently, the petitioner realised that they had inadvertently failed to claim credit of Rs.1,16,29,351/- relating to 3 Bills of entries in the ER-1 return filed for the

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month of May/June 2017. This fact was brought to the notice of the respondents by the petitioner within one year from May/June 2017 vide letter dated 16 February 2018. The petitioner requested the respondents to permit filing of revised Form TRAN-1, either manually or by reopening the GST portal.

4. On 7 January 2021, the respondents issued a letter directing the petitioner to reverse the credit which was not taken in the ER-1 return. The petitioner replied to the said letter and stated that no credit has been taken and, therefore, no question of reversing.

5. On 22 July 2022, the Supreme Court in case of ***Union of India Vs. Filco Trade Centre Pvt. Ltd.***[1] with respect to various technical issues in implementation of the GST directed the GST network to reopen the portal from 1 September 2022 to 31 October 2022 to allow various assessees to file/revise Form TRAN-1. The said date was extended till 30 November 2022.

6. On 23 November 2022, the petitioner manually filed the revised ER-1 return for availing Cenvat credit of Rs.1,16,29,351/- with respect to 3 Bills of entries and also revised TRAN-1 for claiming credit of original amount and additional amount of Rs.1,16,29,351/-. In January/February 2023, respondent no.3 directed the petitioner to submit documents for verification of the revised TRAN-1 and the

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1 2022 (63) GSTL 162 (S.C.)

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petitioner replied to the said letter giving reason for the incremental claim and submitted the documents.

7. On 15 February 2023, respondent no.3 issued a show cause notice proposing to reject the revised TRAN-1. The said show cause notice was replied by the petitioner and, thereafter, on 27 February 2023, respondent no.3 passed the impugned order rejecting the revised Form TRAN-1, insofar as additional credit of Rs.1,16,29,351/- is concerned, on the ground that Circular dated 10 November 2022 only allows filing/revising of TRAN-1 or TRAN-2 and not the returns filed under the erstwhile regime.

8. It is on the above backdrop that the petitioner has challenged the impugned order dated 27 February 2023.

Submissions of the Petitioner :-

9. Ms. Rathi, learned counsel for the petitioner did not press for prayer clauses (a) and (b) but only pressed for prayer clause (c) for issuing writ directing respondent no.3 to consider and allow the claim of the petitioner of transitional credit of Rs.1,16,29,351/-. Ms. Rathi submitted that after 1 July 2017, there was no way that the petitioner could have revised the excise returns for the period May/June 2017 electronically since by that time, the GST regime had come into existence. She submitted that therefore, a manual revised ER-1 return was filed and consequently, TRAN-1 was revised within the time provided by the Supreme Court in the case of ***Filco Trade Centre Pvt. Ltd. (supra).*** She submitted that there

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is no loss of revenue and merely because the revised return is not electronically uploaded under the erstwhile regime but the same has been manually filed, the petitioner should not be deprived of its legitimate claim. She further submitted that mistake of not claiming credit in ER-1 of May/June 2017 was brought to the notice of the respondents in February 2018 within one year from May/June 2017 and sought redressal of the grievance. In support of her submission, she relied upon the following decisions :-

(i) Aberdare Technologies Pvt. Ltd. Vs. Central Board of Indirect Taxes & Customs[2]

(ii) NRB Bearings Ltd. Vs. Commissioner of State Tax[3]

(iii) Jekson Vision Private Limited Vs. Union of India[4]

(iv) Sowmiya Spinners Pvt. Limited Vs. Deputy Commissioner of GST and Central Excise[5]

(v) National Internet Exchange of India Vs. Union of India[6]

(vi) Union of India Vs. Filco Trade Centre Pvt. Ltd. (supra)

Submissions of the Respondents :-

10. Per contra, Ms. Masurkar, learned counsel for the respondents opposed the petition and stated that in accordance with the notification dated 19 February 2010, the

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2 (2024) 21 Centax 227 (Bom.)

3 (2024) 15 Centax 444 (Bom.)

4 (2023) 120 GSTR 91

5 (2024) 23 Centax 58 (Mad.)

6 2021 (147) G.S.T.L. 225 (Del.)

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revision of the excise returns could have been only electronically and not manually. She submitted that since in the instant case, the petitioner has not revised the excise returns electronically, the respondents were justified in rejecting the claim made in manual return and consequently, denying the transitional credit. She further relied upon the findings of the impugned order and thereby prayed for dismissal of the petition.

11. We have heard learned counsel for the petitioner and the respondents.

Analysis and Conclusions:-

12. The first objection raised by the learned counsel for the respondents, relying upon the notification No.4 of 2010 dated 19 February 2010, is that since the revised excise return has not been filed electronically which is the requirement as per the said notification, the impugned order cannot be faulted. In our view, this submission is required to be rejected for more than one reason.

13. We are concerned with revising the excise return for the month of May/June 2017 and the revised return was sought to be filed post 1 July 2017 when the new regime of GST was introduced. Post 1 July 2017, the portal under the erstwhile regime of excise was not functional. Therefore, the petitioner could not have revised its excise returns filed under the erstwhile regime after introduction of the GST regime. Respondents have not shown us that the excise portal was

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functional after 1 July 2017 so as to enable an assessee to revise its excise returns filed prior to 1 July 2017. In the absence of any electronic mode available post 1 July 2017 to revise the excise return of the period prior to 1 July 2017, the claim of the petitioner cannot be rejected on the ground that the revised return ought to have been filed electronically. It would amount to calling upon the petitioner to do something which was not possible electronically post 1 July 2017. Therefore, this contention raised by the learned counsel for the respondents is required to be rejected.

14. The second reason given in the impugned order and relied upon by the learned counsel for the respondents that since the manual revised excise return was filed after a period of one year, the petitioner was not entitled to claim transitional credit. This submission is based on 3rd proviso to Rule 4 of Cenvat Credit Rules, 2004 which states that the manufacturer or the provider of output service shall not take CENVAT credit after one year of the date of issue of any of the documents specified in sub-rule(1) of the Rule 9. In the instant case, we are concerned with the Bills of entries is dated May/June 2017 i.e. prior to 1 July 2017. As observed above from 1 July 2017 i.e. post GST, the erstwhile portals were not functional because of introduction of the GST portal. The period of one year from the date of documents in the present case would expire in May/June 2018. The petitioner on realising the mistake that they have inadvertently not claimed the credit of duties with respect of the documents of

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May/June 2017, immediately vide letter dated 16 February 2018 informed the GST authorities about the said inadvertent error and requested for transitioning the credit attributable to these 3 documents. This letter is within a period of one year specified in the Cenvat Credit Rules, 2004 referred to above. There was no response to the said letter by the respondents. The respondents ought to have guided the petitioner on account of the fact of transitioning from the old regime to the new regime on this issue moreso when there is no dispute otherwise that the petitioner is not eligible to take the credit.

15. It is also important to note that the petitioner had filed its TRAN-1 on 26 August 2017 without claiming the credits under consideration. There were technical issues with respect to the GST portal insofar as revising TRAN-1 was concerned. The said technical issue reached the Supreme Court in case of ***Filco Trade Centre Pvt. Ltd. (supra)*** and the Supreme Court granted time upto 30 November 2022 to submit/revise TRAN-1 and TRAN-2.

16. For the purpose of transitioning, the petitioner had to revise its excise returns which could not be done electronically as observed by us above and unless the said excise returns are revised, the petitioner could not have revised its original TRAN-1 in which the said credit was not claimed. Therefore, the petitioner, after clarification issued by the Supreme Court in the case of ***Filco Trade Centre Pvt. Ltd. (supra)*** immediately filed a manual revise excise return for the period of June 2017 and claimed the credit with respect to 3 Bills of entries and

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thereafter before 30 November 2022, revised its TRAN-1/ TRAN-2 under the GST for transitioning enhanced credit which remained to be claimed in the original TRAN-1/TRAN-2. Therefore, in our view, the reasoning given in the impugned order that the claim was not made within one year in the facts stated above would not survive. The petitioner had informed the respondents within a period of one year, vide letter dated 16 February 2018, about the mistake in not claiming the credit in the excise return. There were technical issues with respect to revising TRAN-1 and non-availability of electronic mode to revise excise return and it is only after directions issued by the Supreme Court in the case of ***Filco Trade Centre Pvt. Ltd. (supra)*** that the petitioner was able to revise its TRAN-1/TRAN-2 by filing manual revised excise return to claim the credit and transitioned under new regime.

17. Even otherwise, if the petitioner is rightly entitled to claim the credit which the respondents have otherwise not raised any objection to except on the ground of time limit of claiming the same, this Court in the case of ***Aberdare Technologies Pvt. Ltd. (supra)*** under the GST regime has permitted the assessee to rectify the error post the statutory period if there is no loss to the revenue. The Supreme Court has confirmed the said decision in the case of ***Central Board of Indirect Taxes & Customs Vs. Aberdare Technologies Pvt. Ltd.***[7] In the instant case also, applying the ratio of this decision, the rejection by the respondents is ill-founded.

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[7] (2025) 29 Centax 10 (SC)

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18. The learned counsel for the petitioner is justified in placing reliance on the decision of the Gujarat High Court in the case of ***Jekson Vision Private Limited (supra)*** wherein on very similar facts transition was allowed. The relevant paragraphs of the said decision supporting the submission of the petitioner reads as under :-

> *"8. Having heard the learned advocates for the respective parties and having considered the materials on record, it is not in dispute that the petitioner has fulfilled the condition of section 140(1) of the CGST Act for carry forward of the Cenvat credit to the GST regime. The denial of carry forward of such transitional credit by the respondents on the ground that manual excise return filed by the petitioner cannot be said to be valid return, is without any basis.*
>
> *9. It is a trite law that computerization of return filing is merely a means for processing the disclosures and claims of the assessee in a transparent and efficient manner. However, if there is any shortcoming in the computerized facility, as it has occurred in the facts of the case when the petitioner was unable to file the original excise return due to some technical issues in the ACES portal and the petitioner was compelled to file return manually along with letter dated July 29, 2017 which was reminded to the respondents by the subsequent letter, the petitioner cannot be denied the benefit of filing such excise return in manual form for transitional credit under section 140(1) of the CGST Act.*
>
> *10. This court as well as other High Courts have time and again have held that where the online facility does not function appropriately, alternative measures to protect the vested rights of the assessee are required to be provided. It is also a settled legal position that substantive rights cannot be curtailed for mere procedural infirmities such as manually filing of excise return. There is no denial on part of the respondents that the petitioner has filed excise return manually or there is adequate balance of Rs. 16,43,117 in their electronic credit ledger while filing GST return between July 2017 to April 23, 2020 and therefore, it cannot be said that there was a wrong carry forward of transitional credit of Rs. 16,43,117 by the petitioner so as to recover such transitional credit from the petitioner.*
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> *11. The Bombay High Court in case of Tata Projects Ltd. v. Deputy Commissioner of Income Tax (supra) has held that wherein*

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the Income -tax Department was unable to process the online returns of the assessee due to technical glitches, the Department ought to have processed the returns manually to avoid any undue hardship to the assessee.

12. Similarly, in case of Shapoorji Pallonji & Co. v. Deputy Commissioner of Income Tax (supra), it was reiterated that where computer systems act as a hindrance for the Department to discharge its statutory obligations, then alternative steps are required to be taken by the Department to avoid any hardship to the assessee.

13. The petitioner is entitled to get the transitional credit as it is a right vested by statute and merely because the petitioner was unable to file GST TRANa£"1 by the due date, i. e., August 28, 2017, it cannot be said that the entitlement of the credit of carry forward of eligible dues would vanish.

14. In view of the above, the attempt on behalf of the respondent authority to deny the transitional credit on the ground that the petitioner has not filed valid excise return and has not paid interest on the delayed reversal of the wrongly availed input-tax credit of Rs. 16,43,117 in contravention of the provisions of section 140 of the CGST Act, is not tenable. It cannot be said that the petitioner wrongly carried forward the Cenvat credit by way of transitional credit under the CGST Act and the supplier would be liable to pay interest on the wrong availment and utilisation of Cenvat credit under the provisions of section 50 of the CGST Act. The petitioner was not at fault for not able to file return on ACES portal and the petitioner has already filed excise return manually which is not in dispute.

15. In such circumstances, the respondent authorities are directed to accept the revised excise return which is filed by the petitioner manually on July 29, 2017 which was duly intimated to the respondents as the petitioner was not able to revise the return by incorporating the Cenvat credit amounting to Rs. 16,43,117 due to some issue in website.

19. In view of the above, we do not see any infirmity in the claim made by the petitioner by revising manually excise return from June 2017 and claiming transition of the enhanced credit under the GST regime by revising TRAN-1 within the time limit specified by the Supreme Court in the case of ***Filco Trade Centre Pvt. Ltd. (supra).***

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20. We, therefore, pass the following order:-

(i) The impugned order dated 27 February 2023 (Exhibit 'B') is quashed and set aside.

(ii) The respondents are directed to accept the revised excise return filed manually by the petitioner on 23 November 2022 and, consequently, permit the transition of Rs. 1,16,29,351/- being the CENVAT credit with respect to 3 Bills of entry for the month of May/June 2017.

(iii) The respondents to give consequential effect to enhanced transition under the GST regime.

21. The above exercise should be completed within a period of eight weeks from the date of uploading the present order.

22. The rule is made absolute in the above terms. The petition is disposed of.

(Jitendra Jain, J) **(M.S. Sonak, J)**

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