IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15940 of 2023

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M/s JMD Alloys Ltd. (10AAACJ7070J1ZT) Village-Deokuli, P.O. and P.S. Bihta, Dist-Patna, PIN 8011103, through its Commercial Manager and Authorized signatory, namely Ajay Kumar, aged about 54 years, Sex-Male, S/o Adalat Prasad, resident of Mohalla Adarsh Colony, Block-A, Bariyar Path, Posta Park, PO GPO, PS Kanarbag, Patna PIN-800020.

... ... Petitioner

Versus

1. Union of India through Chief Commissioner of CGST and Central Excise, 1st Floor, Annexy-Revenue Building, Bir Chand Patel Marg, Patna PIN-800001.
2. Principal Commissioner of CGST and Central Excise, 1st Floor, Annexy-Revenue Building, Bir Chand Patel Marg, Patna PIN-800001.
3. Addl Commissioner (Appeal) of CGST and Central Excise, 1st Floor, Annexy-Revenue Building, Bir Chand Patel Marg, Patna PIN-800001.
4. The Superintendent, CGST and Central Excise Range, Arwal, Santi Kunj, Pitambar Nagar, Near Hotel Aniket, Bihta, Patna PIN 801103.

... ... Respondents

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Appearance :
For the Petitioner : Mr. Viveka Nand, Advocate
For the Respondents : Mr. K.N. Singh, Additional Solicitor General
Mr. Anshuman Singh, Sr.SC

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 30-01-2025

This writ application has been preferred seeking the following reliefs:-

> "(a) For the issuance of appropriate writ and quashing/ setting aside of the Order- in Appeal No 51/ Pat/ GST/ Appeal/ 2023-24, dated 22.05.2023, passed by the Addl Commissioner (Appeal) of CGST & C. Ex, Patna, rejecting petitioner's Appeal, seeking seamless transfer of CENVAT Credit in relation to Excisable Goods in transit on the appointed date, i.e. 01.07.2017,

by way of prescribed Form TRAN-1, as excisable inputs, pertaining to 11 (eleven) well identified Excise Invoices, whereby Petitioner had duly paid CENVAT Duty, amounting to Rs.8,62,566.00 and the said excisable goods pertaining to the said 11 (eleven) invoices were duly received in the petitioner's factory premises in the Month of July, 2017, accordingly accounted/ capitalized in the petitioner's Books of Account, instantly in the same month of July 2017.

(b) For the grant of any other consequential relief/s for which petitioner is found entitled in the eye of law."

Brief Facts of the Case

2. The petitioner is a public limited company incorporated under the provisions of the Companies Act, 1956. It is engaged in manufacturing business of MS-Bars and maintains its account on the basis of mercantile/accrual system. It is a 'person' within the meaning of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act 2017'). The petitioner claims that it is filing periodical central excise returns under its respective PAN based Central Excise Registration ID. In the present GST regime, the petitioner has been allotted GSTIN ID.

3. In the month of June, 2017, the petitioner placed order to the registered suppliers for supplying a few cenvatable/excisable goods of capital nature which were required to be used in the factory of the petitioner for the manufacturing of final centivable

excisable produce. Eleven different suppliers sent consignment of the requisite cenvatable/excisable goods without indicating their respective nature of use to the petitioner's factory premises under cover of eleven different tax invoices, altogether charging CENVAT duty, amounting to Rs. 8,62,566/- on the various dates in the month of June 2017. Those goods were received in the factory premises of the petitioner on various dates in the month of July 2017. The petitioner admits that the transaction value thereof under eleven different tax invoices has been duly recorded in the books of account in the month of July 2017.

4. The petitioner filed prescribed online return, namely TRAN-1 on 20.09.2017 in his GSTIN ID and claimed all the admissible components of CENVAT credit. The jurisdictional Range Superintendent (respondent no. 4) *vide* his Letter dated 02.08.2019 as contained in an Annexure '3' to the writ application informed the petitioner that during TRAN-1 verification against his claim of Rs. 2,19,18,000/-, it has been found that there was ineligible credit of Rs. 8,62,566/- against his claim in Table No. 6(a) of TRAN-1 against capital goods in transit. Respondent no. 4 requested the petitioner to reverse the said ineligible credit urgently under intimation to the office.

5. The petitioner submitted his response which did not satisfy respondent no. 4. By another communication dated 23.10.2019 (Annexure ‘4’), respondent no. 4 pointed out to the petitioner sub-section (2) of Section 140 of the CGST Act, 2017 read with Rule 117 of the CGST Act, 2017. He was of the opinion that by virtue of the explanation under Section 140(2) of the CGST Act, 2017, the unavailed CENVAT credit means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law. Respondent no. 4 expressed his opinion that under Section 140(2) of the CGST Act, 2017, transitional credit on the amount of Rs. 8,62,566/- is not available to the petitioner.

The Order-in Original

6. A show-cause notice in prescribed form DRC-1 proposing recovery of credit amounting to Rs. 8,62,566/- was issued to the petitioner *vide* Annexure ‘5’ and ‘5/A’ (wrongly typed as Annexure ‘5/A’ and ‘5/B’ in the writ petition). Respondent no. 4 finally passed the order in original dated 27.07.2022 (Annexure ‘6’). A perusal of Annexure ‘6’ would show that respondent no. 4

has considered the defence reply of the petitioner and has also given a personal hearing. In his ultimate analysis, the respondent no. 4 took a view that Section 140(5) of the CGST Act allows a registered person, credit of eligible duties and tax in respect of 'inputs' or 'input services' which were received on or after the appointed day but not on which the tax was paid earlier. Further, when it comes to the question of taking credit of the duty paid on the capital goods in transit received on or after 01.07.2017, no facility is provided to enable the assessee to claim credit of the excise duty paid on such capital goods. Respondent no. 4, therefore, confirmed the demand and ordered for recovery of Rs. 8,62,566/- as detailed in TRAN-1 under Section 73 of the CGST Act from the petitioner along with interest at applicable rate on the amount as demanded and penalty at the rate of 10% of the tax amount under Section 73(9).

Appellate Order

7. Aggrieved by the order in original (Annexure '6'), the petitioner preferred First Appeal before the Commissioner (Appeals), CGST. The appellate authority (respondent no. 3) once again considered the grounds on which the appeal was preferred after giving a personal hearing to the learned Advocate on behalf of the appellant. In his opinion, the appellant was not able to

substantiate his plea. The appellate authority held that the plea of the appellant that CENVAT Credit Rules, 2017 does not contain any definition of capital goods but the definition of input has been amended to include capital goods, is not tenable. The appeal has been dismissed *vide* order in appeal, a copy of which is enclosed as an Annexure '7' to the writ application.

8. The petitioner has another remedy of appeal before Appellate Tribunal but it is stated that the Appellate Tribunal is not functional, much less this case does not involve any question of fact or mixed question of facts and law, therefore, the present writ application has been preferred. In course of hearing, learned counsel for the petitioner has submitted that this Court may hear the writ application on its own merit.

Submission on behalf of the Petitioner

9. Learned counsel for the petitioner has assailed the order-in-original (Annexure '6') and the Appellate Order (Annexure '7'). Once again, his submission is that the definition of the terms 'input' under Rule 2(g) of the CENVAT Credit Rules 2017 would take within its' fold the capital goods. It is submitted that both the authorities below have taken an erroneous view and have passed the impugned order under wrong notion of law.

Submission on behalf of Union of India

10. The writ application has been contested by learned A.S.G. It is submitted that in the instant case, the core issue is as to whether or not the duty paid on excisable goods received in the factory premise after 30th of June, 2017 were eligible for seamless transmission for credit from the then existing law to GST law regime by way of "input" as defined in Rule 2(g) of the said CENVAT Credit Rule, 2017. It is his submission that in view of specific deletion of the definition of capital goods and introduction of absolutely new definition of input in the CENVAT Credit Rule, 2017 by superseding/rescinding the earlier CENVAT Credit Rule, 2004 which contained definition of capital goods, the petitioner would not be entitled to claim seamless transfer of the CENVAT credit in connection with the capital goods.

11. Learned ASG has relied upon the definition of the term 'input' as referred in Section 2 (59) of the CGST Act, 2017 and Section 140 (5)of the CGST Act, 2017 to submit that input does not include capital goods and facility of availing transitional credit would not be available to the petitioner in view of Section 140(5). Transitional credit would only be available to 'inputs' and not on the 'capital goods'. According to him, there is a clear demarcation between inputs and capital goods.

12. It is submitted that an identical question fell for consideration before the Hon'ble Gujarat High Court in the case of **RSPL Limited vs Union of India** reported in **2018 (19) GSTL 430 (GUJ)**. The Hon'ble Division Bench of Gujarat High Court has clearly opined that sub-section (5) of Section 140 of the CGST Act, 2017 allows a registered person, credit of eligible duties and tax in respect of inputs or input services which were received on or after the appointed day but on which the tax was paid earlier. In absence of any matching provisions pertaining to capital goods, in a situation where the duty had been paid on purchase of goods prior to the appointed date, but the goods were received on or after the appointed date, there would be no possibility of availing availing credit on such taxes under the GST regime.

13. It is also informed that M/s RSPL Limited had preferred Special Leave Petition (Civil) Diary No. 8350 of 2019 in the Hon'ble Supreme Court of India. The said Special Leave Petition had been dismissed *vide* order dated 05.04.2019. It is, therefore, submitted that the writ application is devoid of merit and the same is liable to be dismissed.

Consideration

14. This Court has heard learned counsel for the petitioner and learned ASG for the Union of India at length. The

facts are not in dispute. The petitioner admits that the goods received in the premises of the factory of the company are the capital goods. His contention is that the definition of “inputs” under Rule 2(g) of the CENVAT Credit Rule, 2017 would also include any or all excisable goods of any nature either of inputs nature or capital goods nature. In order to examine his contention, this Court would briefly take note of the statutory provisions which were in existence prior to coming into force of the GST statues (before 01.03.2017) and those which were brought with effect from 01.07.2017 under the GST regime in relation to credit of excise duty paid on inputs on capital goods. Prior to 01.07.2017, a manufacturer was entitled to claim CENVAT credit of duty paid by him on inputs as well as on the capital goods utilized in the manufacturing process, subject, however, to the conditions which were placed in the CENVAT Credit Rules, 2004. There is no difficulty in understanding that the facility providing the manufacturers to claim credit of the duties paid on inputs as well as capital goods continued even after 01.07.2017 but with certain modifications. CGST Act contained transitional provision according to which unutilized CENVAT credit was eligible to be brought over to the GST regime. The statute made provisions to enable the assessee to avail the credit of duty paid on inputs which

were in transit as on 01.07.2017. But under the CENVAT Credit Rules, 2017 which were framed by the Central Government by virtue of powers conferred upon it under Section 37 of the Central Excise Act, 1944, no facility has been provided to enable the assessee to claim credit of the excise duty paid on such capital goods.

15. This Court has gone through the various provisions of the CGST Act, 2017 and the CENVAT Credit Rules, 2017. A brief history of the legislation on the subject would take this Court to the erstwhile Central Excise Rules, 1944 (hereinafter referred to as the 'Rules of 1944'). Rule 57(q) was inserted in the Rules of 1944 *vide* notification dated 01.03.1994 and sub-rule (1) of Rule 57(q) for the first time introduced the benefit of duty paid by a manufacturer on the capital goods used by him in his factory for payment of duty on excise leviable on its final product subject to the conditions imposed. The term "capital goods" was defined, however, a proviso to sub-rule (2) of Rule 57(q) made it clear that notwithstanding anything contained in sub-rule (1), no credit of the specified duty paid on capital goods shall be allowed if such duty has been paid on such capital goods before the first day of March, 1994. In this way, the facility of utilizing the specified duty paid on capital goods used by a manufacturer in the factory in discharge

of it's duty liability was introduced but the benefit was restricted only to the duties which were paid on such capital goods after 01.03.1994.

16. The word "capital goods" found its definition also in Rule 2(A) of the CENVAT Credit Rules, 2004. Sub-rule (1) of Rule '3' provided that the manufacturer or purchaser of final products are a provider of output service shall be allowed to claim credit of the CENVAT credit of the various duties specified in Clauses (i) to (xi) contained therein paid on any input or capital goods received in the factory of manufacturer of final product or by the provider of output services or on after the tenth day of September, 2004. It also provided that any input service received by the manufacturer of the final product or by the provider of the output service on or after the said date could be eligible for taking credit. This Court further finds that Section 2(19) of the CGST Act defines "capital goods" to mean the goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business. The word 'input' is defined in Section 2(59) to mean any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of a business. The word 'input tax' has also been defined under Section

2(62) to mean the Central Tax, State Tax, Integrated Tax or Union Territory Tax charged on any supplier of goods or services or both made to a registered person and would include several taxes specified in Clauses (a) to (e) contained therein. Again the word 'input tax credit' is defined under Section 2(63) to mean the credit of input tax. The definitions mentioned above are being produced hereunder for a ready reference:-

> "**2(19)** "capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;
> **2(59)** "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;
> **2(62)** "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes
> (a) the integrated goods and services tax charged on import of goods,
> (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9,
> (c) the tax payable under the provisions of sub-section (3) and (4) of section 5 of the Integrated Goods and Services Tax Act,
> (d) the tax payable under the provisions of sub-section (3) and sub-section (4) of section 9 of the respective State Goods and Services Tax Act, or
> (e) the tax payable under the provisions of sub-section (3) and sub-section (4) of section 7 of the Union Territory Goods and Services Tax Act,
> but does not include the tax paid under the composition levy;
> **2(63)** "input tax credit" means the credit of input tax.

17. The CGST Act also contains transitional provisions under Section 140. It is relevant to the transitional arrangements for input tax credit. Section 140 of the CGST Act is being reproduced hereunder for a ready reference:-

> "**Section 140: Transitional arrangements for input tax credit –**
> (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit [1][of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law [2][within such time and] in such manner as may be prescribed:
> Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:-
> (i) where the said amount of credit is not admissible as input tax credit under this Act; or
> (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
> (iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.
> (2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day [3][within such time and] in such manner as may be prescribed:
> Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

1. Inserted by Act 31 of 2018, S. 28 (w.r.e.f. 1-7-2017).
2. Inserted by Act 12 of 2020, S. 128(*a*) (w.e.f. 18-5-2020).
3. Inserted by Act 12 of 2020, S. 128(*b*) (w.e.f. 18-5-2020).

Explanation.–For the purposes of this sub-section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012-Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished [1][goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:—

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;

(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and

(v) the supplier of services is not eligible for any abatement under this Act:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such

1. Substituted by Act 12 of 2020, S. 128(*c*), for "goods held in stock on the appointed day subject to" (w.e.f. 18-5-2020).

conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994, (32 of 1994) but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,-

(a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-Section (1); and

(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the [1][existing law, within such time and in such manner as may be prescribed], subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to

1. Substituted by Act 12 of 2020, S. 128(*d*), for "existing law" (w.e.f. 18-5-2020).

take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished [2][goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:—

(i) Such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is not paying tax under section 10;

(iii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and

(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as [3][credit under this Act, within such time and in such manner as may be prescribed, even if] the invoices relating to such services are received on or after the appointed day.

(8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day [1][within such time and in such manner] as may be prescribed:

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an

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2. Substituted by Act 12 of 2020, S. 128(e), for "goods held in stock on the appointed day subject to" (w.e.f. 18-5-2020).
3. Substituted by Act 12 of 2020, S. 128(*f*), for "credit under this Act even if" (w.e.f. 18-5-2020).
1. Substituted by Act 12 of 2020, S. 128(*g*), for "in such manner" (w.e.f. 18-5-2020).

original return or a revised return where the credit has been reduced from that claimed earlier:

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law.

(9) Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such [2][credit can be reclaimed within such time and in such manner as may be prescribed, subject to] the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

(10) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

*Explanation*1. - For the purposes of [3][sub-sections (1), (3), (4)] and (6), the expression "eligible duties" means –

(*i*) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(*ii*) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(*iii*) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

[4][***]

(*v*) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(*vi*) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986); and

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), in respect of inputs held in stock and inputs

2. Substituted by Act 12 of 2020, S. 128(*h*), for "credit can be reclaimed subject to" (w.e.f. 18-5-2020).

3. Substituted by Act 31 of 2018, S. 28 for " sub-sections (3), (4)" (w.r.e.f. 1-7-2017).

4. Cl. (iv) omitted by Act 31 of 2018, S. 28 (w.r.e.f. 1-7-2017).

contained in semi-finished or finished goods held in stock on the appointed day.

Explanation 2.-For the purposes of [1][sub-sections (1) and (5)], the expression *"*eligible duties and taxes*"* means--

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

[2][***]

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001); and

(viii) the service tax leviable under section 66-B of the Finance Act, 1994 (32 of 1994),

in respect of inputs and input services received on or after the appointed day.

[3][*Explanation* 3.--For removal of doubts, it is hereby clarified that the expression "eligible duties and taxes" excludes any cess which has not been specified in *Explanation* 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975).]

This clause provides for transitional arrangements for carrying forward of input tax credit available under the existing law. (*Notes on Clauses*)

18. From the above discussions, it is evident that the GST regime also continued with the same facility, though in a

1. Substituted by Act 31 of 2018, S.28, for "sub-section (5)" (w.r.e.f. 1-7-2017)
2. Cl. (iv) omitted by Act 31 of 2018, S.28, for Cl. (iv) (w.r.e.f. 1-7-2017). Prior to its omission, Cl. (iv) read as under:- "(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);".
3. Inserted by Act 31 of 2018, S. 28 (w.r.e.f. 1-7-2017)

different format. No distinction between duty paid on capital goods or inputs has been made under the GST Act. Sub-section (1) of Section 16 allowed every registered person, subject to conditions and restrictions as may be prescribed to take credit of input tax charged on any supply of goods or services or both to him. The word 'input tax' has been defined to mean various taxes charged on any supply of goods or services or both to a registered person. A reading of subsection (3) of Section 16 makes it crystal clear that it provides for claim of depreciation of tax component of the cost of capital goods or plant and machinery under the Income Tax Act, 1961 and if such claim has been made by a registered person, the input tax credit on such tax component would not be allowed. Sub-section (1) and (2) of Section 17 pertain to restriction of the tax credit when the goods or services are utilized partially for business purpose and partially for other purposes or partially for effecting taxable supplies and partially for non-taxable supplies, these provisions do not make any distinction between capital goods and inputs.

19. The distinction in the matter of giving benefit of CENVAT credit on capital goods during the transitional period may be found in Section 140 of the CGST Act. While this provision enables an assessee to carry forward and take credit of

unutilized CENVAT credit paid on inputs as well as on capital goods, in the manner as may be prescribed and subject to the conditions contained in the provisions, sub-section (5) of Section 140 makes a distinction between the capital goods and inputs. This provides that a registered person would be entitled to take credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed date but the duty on tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed date.

20. An identical question had fallen for consideration before the Hon'ble Division Bench of the Gujarat High Court in the case of **RSPL Limited** (*supra*). A reading of the judgment shows that very elucidately the law on the subject has been discussed by the Hon'ble Division Bench of Gujarat High Court. Paragraph '17', '18', '19' and '20' of the judgment in case of **RSPL Limited** (*supra*) are being reproduced hereunder:-

> "**17.** Very clearly thus sub-section (5) of Section 140 allows a registered person, credit of eligible duties and tax in respect of inputs or input services which were received on or after the appointed day but on which the tax was paid earlier. In absence of any matching

provisions pertaining to capital goods, in a situation where the duty had been paid on purchase of goods prior to the appointed day but the goods were received on or after the appointed day, there would be no possibility of availing credit on such tax under the GST regime.

18. It can thus be seen that to this limited extent, the CGST Act has made a distinction between the capital goods and inputs. The question is, is this demarcation unlawful? As noted, the fulcrum of the petitioner's argument was that this makes an artificial distinction between capital goods and inputs which has no rational relation to the purpose sought to be achieved. The subsidiary contention of the petitioner was that there is no reason why such distinction should have been made. On the other hand, the respondents had argued that granting of credit on the duty paid is in the nature of concession. For valid reason, law can always be framed not granting such concession in certain cases.

19. The legislature, as we have noted, made a clear and conscious demarcation between capital goods and inputs when it comes to availing credit of the duties paid on the goods which are in transit. When the entire tax structure was being replaced by the GST provisions, there would arise a need for making transitional arrangements. Chapter XX of the CGST Act, as noted, contains transition provisions. Section 140 contained in the said chapter makes detailed provisions for transitional arrangements for input tax credit. Subject to contentions and in the manner as may be prescribed, the unused tax credit would be migrated to the GST regime. This section also would enable a registered person to claim credit of the duty paid prior to the appointed day on the inputs even though the inputs may be received after the appointed day. This

section consciously does not provide any such facility in relation to the capital goods in transit. This demarcation itself would not be artificial, arbitrary or in any manner, discriminatory. The capital goods and inputs used in manufacturing process have always been treated differently and distinct treatment have been given under the earlier statutes. If the legislature therefore was of the opinion that in relation to capital goods in transit, duty paid before the appointed date cannot be claimed as a credit in the GST regime, we do not find that the distinction is in any manner artificial or arbitrary.

20. Article 14 as is well-known, prohibits class legislation but not reasonable classification. To bring in the element of discrimination in terms of Article 14 of the Constitution, the onus would be on the petitioner to establish that the persons or things treated differently form a homogeneous class. In the present case, the source of the petitioner's grievance or dissatisfaction is that the inputs and capital goods are treated differently. When we find that the inputs and capital goods form different and distinct classes, the question of subclassification or artificial demarcation would not arise. One of the grounds cited in the affidavit in reply filed by the respondents for treating the capital goods in transit differently is that the capital goods are typically slow moving items. This term is not explained in detail in such affidavit. However, to us it appears that the suggestion of the respondents is that unlike inputs, the capital goods which can be in the nature of plant and machinery including highly sophisticated specially designed and manufactured machines, may take much longer time for delivery and installation after the orders are placed by the manufacturers and the legislature was not inclined to

keep the issues of migration of tax credits and pending claims open for indefinite period of time."

21. This Court finds that the CENVAT Credit Rules, 2017 has superseded CENVAT Credit Rules, 2004 and conjoint reading of the provisions of GST Act and CENVAT Rules, 2017 leaves no room for taking any different view from that of the Hon'ble Gujarat High Court in the case of **RSPL Limited** (*supra*).

22. We do not find any error in the impugned orders dated 27.07.2022 (Annexure '6') and 25.05.2023 (Annexure '7').

23. This writ application has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

Rishi/-

AFR/NAFR	AFR
CAV DATE	29.01.2025
Uploading Date	31.01.2025
Transmission Date	