IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 220 of 2021

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M/s. Steel Authority of India Limited, Bokaro Steel Plant, a company within the meaning of the Companies Act, 1956 and having its registered office at Ispat Bhawan, Bokaro Steel Plant, P.O. & P.S. B.S. City, District Bokaro (Jharkhand), represented through its Authorized Signatory/DGM (F&A), Rajeev Gupta, aged about 46 years, S/o Shri Ramjee Prasad, R/o Qr. No. 7302, Sector – 4F, P.O. & P.S. Sector-4, District Bokaro.

…… Petitioner

Versus

1. The State of Jharkhand.
2. Joint Commissioner of State Tax (Appeal), Dhanbad Division, Dhanbad, having its office at Court Compound, P.O. & P.S. Dhanbad, District Dhanbad.
3. Commissioner of the State Tax of Jharkhand, having its office at Project Building, Dhurwa, P.O. & P.S. Dhurwa, District Ranchi-834001.
4. Deputy Commissioner of State Tax, Bokaro Circle, P.O. & P.S. B.S. City, District Bokaro …… Respondents

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CORAM: **Hon'ble the Chief Justice**
Hon'ble Mr. Justice Deepak Roshan

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For the Petitioner : Mr. Sumeet Kumar Gadodia, Advocate
Mr. Ranjeet Kushwaha, Advocate
Ms. Shruti Shekhar, Advocate
For the Respondents: Mr. Sachin Kumar, AAG-II
Mr. Gaurav Raj, A.C. to AAG-II

C.A.V. ON 16/12/2024 **PRONOUNCED ON:30 /01/2025**

Per Deepak Roshan, J.

The petitioner has filed the instant writ application for following reliefs:-

> *(a) A writ of and/or order and/or direction in the nature of writ of mandamus, or a writ of certiorari or any other appropriate writ, order or direction to quash the impugned Order No. 1826 dated*

13.12.2019 passed by Joint Commissioner of State Tax (Appeals), Dhanbad Division, Dhanbad;

(b) For a declaration that the impugned order No. 1826 dated 13.12.2019 passed by Joint Commissioner of State Tax (Appeals) has been passed in gross violation of principles of natural justice.

(c) For a declaration that the impugned Order No. 1826 dated 13.12.2019 passed by Joint Commissioner of State Tax (Appeals) denying the carry forward of disputed credit of Rs. 30,28,48,166/- in Form GST TRAN-1 has been passed in clear violation of the legal provisions on account of non-application of mind to confirm a non-existent demand showing the sole intention of the department to harass and confirm a demand which has no legs to stand;

(d) For a declaration that action of Respondent No.4 in blocking the SGST amounting to Rs. 30,29,99,999/- and Cess amounting to Rs. 13,76,62,229/- in February, 2020 in the Credit Ledger against the demand of Rs. 37,03,90,184/- along with interest amounting to Rs. 4,18,89,607.65 and penalty amounting to Rs. 3,70,39,018.40, as confirmed by learned Joint Commissioner of State Tax (Appeals)and subsequently unblocking and adjusting the credit of SGST amounting to Rs. 30,29,99,999/- on 25.11.2020 against the above-stated demand is arbitrary, illegal and bad in law.

(e) Upon such declaration, the DCST or any other competent authority be directed to reverse the credit on consumables amounting to Rs. 30,29,99,999/- in the Credit Ledger of Petitioner.

(f) For a declaration that in terms of Circular No. 33/07/2018-GST F. No. 267/67/2017-CX.8 dated 23.02.2018 issued by Ministry of Finance, Department of Revenue, CBEC, there is no restriction in carrying forward the balance outstanding in the VAT Return to the GST Regime under Section 140(1) of the Jharkhand Goods and Services Tax Act, 2017, subject to the condition that said credit is not utilized;

(g) For a declaration that the un-availed input tax credit of Rs. 6,75,42,018/-, being the VAT amount paid on capital goods received by the Petitioner under the erstwhile VAT Regime, is validly earned and is eligible for carry forward under the GST Regime in view of Section 140(2) of the Jharkhand Goods and Services Tax Act, 2017;

(h) For a declaration that no show cause notice under Section 73 of the Jharkhand Goods and Services Tax Act, 2017 can be issued for demanding transitional credit availed under Section 140 of the Jharkhand Goods and Services Tax Act, 2017;

(i) For a declaration that Rule 121 of the Central Goods and Services Tax Rules, 2017 is ultra vires Section 140 read with Section 164 of the Central Goods and Services Tax Act, 2017;

(j) For a declaration that no interest is chargeable and no penalty is imposable in the facts and circumstances of the case;

(k) Ad-interim order in terms of all the prayers above;

(l) Costs of and incidental to this application be paid by the respondents;

(m) Such further or other order or orders be made and/or directions be given as would afford complete relief to your petitioner.

2. The brief facts of the case are that Petitioner, being a Public Sector Undertaking (PSU), is engaged in manufacture of various steel products and was registered under the provisions of the Jharkhand Value Added Tax Act, 2005 (for short 'JVAT Act') and with the implementation of GST regime, petitioner has also obtained registration under the provisions of 'Jharkhand Goods and Services Tax Act, 2017 (for short 'JGST Act') bearing Registration No. 20AAACS7062FAZJ.

3. Under the VAT regime, as on 30th June, 2017, Petitioner Company was having an un-availed input tax credit which was transitioned by it under GST regime in terms of Section 140(1) of JGST Act. However, vide Show Cause Notice dated 21.12.2023, proceeding under Sections 73,74, 122, 132(1)(d) of JGST Act was initiated against the petitioner on following grounds, namely;

(i) *Petitioner availed input tax credit of Rs. 31,90,42,496/- on purchase of consumables which it was not entitled to avail in terms of Section 18(8)(viii) of JVAT Act and, accordingly, transition of said credit under the GST Act was impermissible.*

(ii) *Petitioner availed input tax credit on capital goods amounting to Rs. 6,79,42,018/- which was also not available to Petitioner in terms of provisions of Section 18(5) of JVAT Act and, thus, transitioning of the same under the GST Act was illegal.*

4. Against the aforesaid show cause notice, petitioner filed a detailed reply and rebutted all the allegations made in the show cause notice. However, Assessing Officer i.e. Deputy Commissioner of State Tax, Bokaro, vide its order dated 08.01.2018, denied transitioning of the aforesaid credit under GST regime and, accordingly, raised a demand of Rs. 37,03,90,184/- upon the petitioner company along with interest amounting to Rs. 4,18,89,607.65/- under Section 50 of JGST Act and even imposed penalty amounting to Rs. 3,70,39,018.40/- under Section 73(9) of JGST Act on the ground that transitioning of inadmissible input tax credit under the GST Act was illegal.

5. Against the aforesaid order, the petitioner preferred an appeal before the Appellate Authority, but, the Appellate Authority, vide impugned Judgment and order dated 13.12.2019, rejected the appeal filed by the petitioner and confirmed the adjudication order dated 08.01.2018.

6. Consequent upon confirmation of demand by Appellate Authority, Respondent No.4 blocked credit of SGST amounting to R*s.* 30,29,99,999/- and credit of Cess amounting to Rs. 13,76,62,229/- in the month of February, 2020 in electronic Credit Ledger of the petitioner. Thereafter, Respondent No.4, on 25.11.2020, unblocked the aforesaid amount from electronic Credit Ledger of the petitioner, but, adjusted the credit of SGST lying in electronic Credit Ledger of the petitioner amounting to Rs.30,29,99,999/- against the demand raised in the adjudication order.

Thus, an amount of Rs. 30,29,99,999/- was appropriated from electronic Credit Ledger of the petitioner towards adjustment against the impugned demand dated 08.01.2018.

7. Mr. Sumeet Kumar Gadodia, counsel appearing for petitioner submitted that the issue involved in the instant writ application is squarely covered by a judgment delivered by a Bench of this Hon'ble Court in the case of ***'Usha Martin Limited Vs. Additional Commissioner, Central GST & Excise, Jamshedpur & Ors.'***, *reported in* ***(2022) SCC OnLineJhar 1764.***

8. It was submitted, inter alia, that exactly similar issue came up for consideration before this Court in the aforesaid case, wherein similar adjudication order denying the benefit of migration of CENVAT credit under GST regime was passed by adjudicating authority under the provisions of GST Act on the ground that availment of CENVAT credit under Central Excise Act, 1944 and Finance Act, 1994 was inadmissible.

It has been submitted that this Hon'ble Court, after taking into consideration detailed provisions of GST Act, in substance, held that eligibility or ineligibility of CENVAT credit/Input Tax Credit under the erstwhile Act is to be adjudicated in terms of the provisions of erstwhile Act and migration of the credit under GST Act cannot be denied merely because certain credit of ITC, which has been migrated, was ineligible under the repealed Act.

9. Mr. Sachin Kumar, learned AAG-II appearing for the State, admitted at Bar that the issue involved in the instant writ petition is covered by a coordinate Bench of this Court in the case of *Usha Martin Limited (supra)*.

10. In view of aforesaid admission by the parties at Bar, this court deems it fit to extract the relevant paragraphs of the aforesaid Judgment for ready reference, as under:-

> ***"(2)*** *By the impugned adjudication proceedings initiated under section 73 of the C.G.S.T. Act, 2017, respondent No.1-Additional Commissioner, C.G.S.T. and Excise, Jamshedpur has disallowed the Cenvat credit amounting to Rs. 10,21,05,096/- carried forward by the petitioner by filing TRAN-1, in terms of Section 140 of the C.G.S.T. Act, 2017 by the impugned order-in-original dated March 30, 2022 (annexure-1)."*
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> ***"18.*** *The enumerated conditions under which the registered person shall not be entitled to avail of the credit of input tax are not one which are applicable to the case of the present petitioner. The show-cause notice under which the instant adjudication proceedings were initiated is worded allege similar contraventions under the CEA, Finance Act, 1994 and the CCR as the previous show-cause notices issued under the existing law against the petitioner relating to contravention of the C.E.A., Finance Act and C.C.R. The adjudicating authority does not hold that the transition of Cenvat credit under section 140 of the C.G.S.T. Act by the petitioner and relating to the period just before the appointed date, i.e., July 1, 2017 are not one which are inadmissible to be credited in terms of section 16(2) of the C.G.S.T. Act. The show-cause notice itself alleges contravention of the C.E.A., Finance Act, 1994, read with C.C.R., 2004. As such, sub clause (i) of proviso to section 140 does not apply to the case of the petitioner at hand. It is neither the allegation against the petitioner that he had not furnished his returns required under the existing law for the period of six months immediately preceding the appointed date as per clause (ii) to the proviso to section 140. In substance, the contraventions which have been alleged and the proceedings which have been initiated under section 73(1) of the C.G.S.T. Act are in relation to violation of the C.E.A. and Finance Act read with the C.C.R. The gist of the imputation is that the petitioner could not claim the Cenvat credit in lieu of invoices raised by its Bokna mines as both of them were independent entities. Similar was the imputation in respect of the previous show-cause notices issued under the existing law which are pending adjudication before the learned CESTAT or the Commissioner (Appeals) for different periods and in some of which the petitioner has already got a stay by the learned CESTAT. Whether the Cenvat credit under the existing law were admissible to be availed and transitioned by the petitioner was not an issue lying within the jurisdiction of the C.G.S.T. authorities to be proceeded against and determined under the relevant provisions of section 73 of the C.G.S.T. Act which provides as under:*
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> > *"Under section 73 of the C.G.S.T. Act a proper officer may require a registered person to show cause in case it is found that he has not paid any tax or short paid or erroneously refunded or where input-tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any willful misstatement or suppression of fact to evade tax (such contraventions are covered by section 74 of the C.G.S.T. Act) asking him to explain as to why he should not pay the amount specified in the notice along with interest and under section 50 and penalty thereupon".*
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> *A perusal of the provisions of section 73 of the CGST Act makes it clear that such a proceeding can be initiated for non-payment of any tax or short payment of such tax or*

for erroneous refund of such tax or for wrongly availing or utilizing the input-tax credit which are available under the C.G.S.T. Act. Section 73 does not speak of Cenvat credit as the C.G.S.T. Act does not provide for Cenvat credit rather the term has been subsumed in the expression input-tax credit both relating to the supply of goods or services. The assumption of jurisdiction by respondent No.1 to determine whether the Cenvat credit was admissible under the existing law by invoking provisions of section 73 of the C.G.S.T. Act was therefore not proper in the eye of law.

19. *This leads us to the next question 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. We have to then advert to section 174 of the C.G.S.T. Act to find the answer. Section 174 relates to repeal and saving and has been engrafted under the chapter XXIs relating to miscellaneous provisions. Pursuant to the 101 Constitutional amendment, articles 246A, 269A and 279A were inserted and certain articles like section 268A were repealed. …….*

22. *Therefore, it is clear that the repeal of the existing laws upon coming of the G.S.T. law regime did not leave a vacuum as to past transactions which were not closed. The repeal and saving clause (e) under section 174(1) of the C.G.S.T. Act allowed such legal proceedings to be instituted in respect of inchoate rights except rights under transactions which were past and closed. The petitioners also admit that proceedings for availing Cenvat credit which were allegedly inadmissible under the C.E.A., Finance Act, read with C.C.R. 2004 could have been initiated under the existing laws. It is also not in dispute 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. The duty of the Constitutional courts is to interpret the law and also to ensure that there is certainty about the law not only in the minds of the law enforcement agencies but also in the common person as to where he stands in the eye of law. 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 citizens 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 that is 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. Such a course cannot be countenanced in law. As such, we are of the considered view that the initiation of proceedings by respondent No.1 under section 73(1) of the C.G.S.T. Act, 2017 for alleged contravention of the C.E.A. and Finance Act, read with C.C.R. against the petitioner by filing TRAN 1 in terms of section 140 of the C.G.S.T. Act for transition of CENVET credit as being inadmissible under the existing law was beyond his jurisdiction.Consequently the order-in-original dated March 30, 2022 passed by respondent No.1 being without jurisdiction cannot be sustained in the eye of law. The impugned adjudication proceedings and the order-in-original dated March 30, 2022 are accordingly quashed.*

23. *However, respondent-authorities are at liberty to initiate proceedings under the provisions of the existing law, i.e. C.E.A. 1944, Finance Act, 1994 read with C.C.R., 2004 against the petitioner for the relevant tax period in accordance with law."*

(Emphasis supplied)

11. In view of the settled proposition of law, the instant writ petition is disposed of in terms of the order dated 10th November, 2022 passed in the case of *Usha Martin Limited (supra)* and the impugned adjudication Order dated 08.01.2018 (Annexure-9) and the Appellate Order dated 13.12.2019 (Annexure-15) are, hereby, quashed and set aside. Since Respondents have already recovered an amount of Rs.30,29,99,999/- against the impugned demand by reversing the credit available in electronic Credit Ledger of the petitioner company, we further direct the Respondents to restore the amount of Rs. 30,29,99,999/- along with statutory interest in electronic Credit Ledger of the petitioner within a period of four weeks from the date of the order.

12. However, the Respondent-authorities are at liberty to initiate proceeding under the provisions of the repealed Act i.e. VAT Act, 2005 against the petitioner for relevant tax periods for availment of alleged inadmissible input tax credit in accordance with law, if so advised.

13. With the above observations, the instant writ application stands disposed of. However, there shall be no order as to costs.

(M.S. Ramachandra Rao, C.J.)

(Deepak Roshan, J.)

Amardeep/
A.F.R