Reserved On : 16/06/2026
Pronounced On : 29/06/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO.21685 of 2019

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI Sd/-

==========

Approved for Reporting	Yes	No
	✔	

==========

DILIP BABUBHAI PATEL,
PROPRIETOR OF M/S SHREE UMIYA TIMBERS
Versus
STATE OF GUJARAT & ANR.

==========

Appearance:
KUNTAL A PARIKH(7757) for the Petitioner(s) No. 1
MR RAJ TANNA, AGP for the Respondent(s) No. 1,2

CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

(1) In the present writ petition, the petitioner prays for directions directing the respondents to grant refund of Rs.18,74,676/- along with applicable interest thereon, and also for re-crediting the Input Tax Credit (ITC) of Rs.18,74,676/- to its Electronhic Credit Ledger (ECL).

BRIEF FACTS:

(2) The petitioner is engaged in the business of manufacturing wooden pallets and boxes (hereinafter referred to as the "finished goods"). It is the case of the petitioner that during the subsistence

of the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as "the VAT Act"), the petitioner purchased the raw materials upon payment of Value Added Tax at the rate of 15% and sold the finished goods on payment of VAT at the rate of 5%. Consequently, it is claimed by the petitioner that as on 30.06.2017, it had accumulated excess ITC amounting to Rs.23,74,689/-, as reflected in its return filed in Form-201 for the month of June, 2017 under the VAT Act.

(3) With effect from 01.07.2017, the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 (hereinafter collectively referred to as "the GST Acts") came into force, resulting in the repeal of the VAT Act insofar as the goods purchased and sold by the petitioner were concerned.

(4) The petitioner accordingly migrated its registration from the VAT regime to the GST regime for the purpose of carrying on its business. Upon introduction of the GST regime with effect from 01.07.2017, the petitioner carried forward the accumulated ITC of Rs.23,74,689/- pertaining to State Goods and Services Tax (hereinafter referred to as the "transitional credit") under Section 140 of the GST Acts by filing Form GST TRAN-1.

Consequently, the said transitional credit stood reflected in the petitioner's ECL in July, 2017.

(5) By virtue of Section 140 of the GST Acts, the accumulated ITC earned by the petitioner under the VAT Act stood validly transitioned into the GST regime and became ITC available under the GST Acts with effect from 01.07.2017.

(6) Thereafter, under the GST regime, the petitioner purchased the aforesaid raw materials upon payment of CGST at the rate of 9% and SGST at the rate of 9%, whereas the finished goods were liable to output tax at the rate of 6% CGST and 6% SGST. Owing to such inverted duty structure, whereby the rate of tax on inputs exceeded the rate of tax on outward supplies, ITC continued to accumulate in the petitioner's ECL.

(7) Accordingly, for the period from 01.07.2017 to 31.03.2018, the petitioner accumulated excess ITC aggregating to Rs.28,54,987/-, comprising CGST credit of Rs.2,40,802/- and SGST credit of Rs.26,14,185/-, which included the transitional credit of Rs.23,74,689/-.

(8) As on 31.03.2018, the petitioner had accumulated total ITC of Rs.28,54,987/-, out of

which it preferred an application for refund of SGST amounting to Rs.23,50,000/- in Form GST RFD-01A under Rule 89 of the Central Goods and Services Tax Rules, 2017 and the Gujarat Goods and Services Tax Rules, 2017 (hereinafter referred to as "the GST Rules"). Upon submission of the refund application, the amount of Rs.23,50,000/- was debited from the petitioner's ECL.

(9) Vide communication dated 09.10.2019, the respondent No.2 sanctioned refund of only Rs.4,75,324/- out of the total claim of Rs.23,50,000/-. Simultaneously, respondent No.2 issued Payment Advice in Form GST RFD-05 dated 09.10.2019, pursuant to which the aforesaid amount of Rs.4,75,324/- came to be credited to the petitioner's bank account. Consequently, respondent No.2 rejected the balance refund claim of Rs.18,74,676/-.

(10) Since the petitioner received payment of only Rs.4,75,324/- pursuant to the Payment Advice, the petitioner approached respondent No.2 to ascertain the reasons for non-sanctioning of the remaining refund amount of Rs.18,74,676/-. According to the petitioner, respondent No.2 orally informed that the refund had been declined on the ground that the amount represented transitional

credit of SGST and that refund of such transitional credit was not admissible under Section 54(3) of the GST Acts, notwithstanding the fact that the credit had accumulated on account of an inverted duty structure.

SUBMISSIONS ON BEHALF OF THE PETITIONER :

(11) Learned advocate Mr.Kuntal Parikh appearing on behalf of the petitioner has made the following submissions:

(12) That the petitioner's entitlement to carry forward accumulated ITC under Section 140 of the GST Acts has never been disputed by the respondents, and the transitional SGST credit carried forward through Form GST TRAN-1 from VAT to GST was duly accepted by the department and stood credited to the petitioner's ECL without any objection. Thus, since the validity, admissibility and quantum of such credit having attained finality, the respondents cannot now seek to deny its legal character while considering the petitioner's claim for refund under Section 54(3) of the GST Acts.

[

(13) That upon migration of the ITC under Section 140 of the GST Acts, it becomes part of the ECL Ledger, and such credit forms an integral part of

the ITC available under the GST enactments. It is submitted that the statute does not recognize any distinction between credit carried forward under Section 140 of the GST Acts and credit earned subsequent to the implementation of GST, hence in the absence of any express statutory provision creating such distinction, the respondents cannot artificially classify the credit into "transitional credit" and "GST credit" merely for the purpose of denying refund.

(14) That neither Section 54 of the GST Acts nor any other provision of the GST enactments authorizes the respondents to bifurcate the balance available in the ECL into separate categories depending upon the source from which the credit originated. Reference is made to the expression "Input Tax Credit" employed in Section 54(3) of the GST Acts, and it is submitted that the legislature did not intend to exclude transitional credit from the ambit of refund under Section 54(3) of the GST Acts, and if such was the intention, the same would have been expressly incorporated. Neither the substantive provision contained in Section 54(3) of the GST Acts nor Clause-(ii) of the first Proviso thereto excludes refund of unutilized transitional ITC.

(15) That Section 140 of the GST Acts was enacted as a beneficial provision to protect vested rights and ensure seamless transition from the erstwhile VAT regime to the GST regime, and the legislative object was to preserve the accumulated credit and prevent its extinction merely because of the introduction of a new taxation system. It is contended that if the interpretation canvassed by the respondents is accepted, the very object underlying Section 140 of the GST Acts would stand defeated, as accumulated transitional credit would remain permanently blocked in the ECL in cases where the registered person is unable to utilize the same owing to an inverted duty structure. Such an interpretation would render Section 140 of the GST Acts nugatory and frustrate the legislative intent.

(16) That the petitioner is admittedly engaged in a business characterized by an inverted duty structure, inasmuch as the rate of tax on inputs exceeds the rate of tax on outward supplies. Consequently, despite continuous utilization of ITC, substantial credit continues to accumulate in the ECL. It is precisely to address such situations that Section 54(3)(ii) of the GST Acts confers a statutory right to claim refund of unutilized ITC.

Once the petitioner satisfies all statutory conditions prescribed under Section 54(3) of the GST Acts, the respondents cannot deny refund solely on the ground that a part of the accumulated credit originated through the transitional mechanism under Section 140 of the GST Acts.

(17) That the expression "Input Tax Credit" occurring in Section 54(3) of the GST Acts cannot be assigned a meaning different from the identical expression employed in Section 49(4) of the GST Acts. The respondents themselves concede that the transitional credit carried forward under Section 140 of the GST Acts can be utilized towards discharge of output tax liability under Section 49(4) of the GST Acts. Having accepted that position, the respondents cannot contend that the very same credit ceases to be "Input Tax Credit" when refund is claimed under Section 54(3) of the GST Acts. Such mutually inconsistent interpretation of the same statutory expression is wholly impermissible in law.

(18) That the respondents have failed to appreciate that utilization of Input Tax Credit under Section 49(4) of the GST Acts and refund thereof under Section 54 of the GST Acts are not competing rights but complementary statutory

consequences flowing from the same credit. Where the credit is capable of being utilized, the registered person may discharge his output tax liability. Conversely, where such utilization becomes impossible or commercially impracticable owing to accumulation arising from an inverted duty structure, Section 54(3) of the GST Acts enables refund of the unutilized balance. Therefore, denial of refund despite acknowledging the validity of the credit would result in permanent deprivation of a vested statutory benefit.

(19) That the respondents have placed complete reliance upon the second Proviso to Section 142(3) of the GST Acts, without appreciating its true legislative purpose. Section 142(3) of the GST Acts governs refund claims arising under the repealed enactments and merely provides that such claims shall be adjudicated in accordance with the existing law. The second Proviso thereto only prohibits an assessee from simultaneously claiming refund of the same accumulated credit under the repealed enactments after having already elected to carry forward such credit under Section 140 of the GST Acts. The Proviso is intended only to prevent double benefit and nothing more.

(20) That the second Proviso to Section 142(3) of the GST Acts nowhere provides that once transitional credit has been carried forward under Section 140 of the GST Acts, such credit can never thereafter be refunded under the GST enactments. Had Parliament intended to impose such a far-reaching restriction, it would have expressly incorporated the same in Section 54 of the GST Acts itself. The respondents are, therefore, attempting to enlarge the scope of the second Proviso beyond its plain language, which is impermissible in law.

(21) That the respondents have misconstrued the expression "relevant date" occurring in Explanation (2) to Section 54 of the GST Acts. The said Explanation merely prescribes the limitation for filing refund applications under Section 54(1) of the GST Acts. In the case of refund arising on account of an inverted duty structure under Section 54(3)(ii) of the GST Acts, the relevant date is the due date for furnishing the return under Section 39 of the GST Acts for the relevant tax period. The Explanation has no bearing whatsoever on the issue involved in the present petition and cannot be relied upon to deny refund of the petitioner's accumulated credit.

(22) Reliance is placed upon the decision of the Gujarat High Court in the case of M/s.Intas Pharmaceuticals Ltd. vs. Union of India & Ors., rendered in Special Civil Application No.12712 of 2019, decided on 10.01.2024. It was further submitted that the Special Leave Petition preferred against the said judgment came to be dismissed by the Supreme Court on merits. The said principle has subsequently been followed by the Gujarat High Court in the cases of Torrent Pharmaceuticals Ltd. vs. Union of India, 2024(22)Centax 431(Guj) and Ford India Pvt. Ltd. vs Union of India, 2025(94) GSTL 84 (Guj.) thereby consistently recognizing the entitlement of an assessee to refund in respect of accumulated credit notwithstanding its transitional origin.

(23) Reliance is also placed upon the decision of the Gujarat High Court in the case of Weatherproof Solution vs. State of Gujarat, 2025(32) Centax 258 (Guj.), wherein the Court held that an assessee who had not carried forward accumulated credit through Form GST TRAN-1 was entitled to seek refund under the existing law.

(24) That without prejudice to the aforesaid submissions, learned advocate Mr.Parikh has further

contended that even assuming the respondents were of the view that any part of the refund claim was inadmissible, respondent No.2 was bound to follow the mandatory procedure prescribed under Rule 92 of the GST Rules by issuing a show-cause notice and affording the petitioner an opportunity of hearing before rejecting any portion of the refund claim. Admittedly, no such notice was ever issued and no adjudicatory order was passed. The rejection of refund, therefore, stands vitiated for breach of the principles of natural justice and non-compliance with the mandatory statutory procedure.

(25) That the respondent No.2 has further acted in contravention of Rule 93 of the GST Rules by failing to re-credit the amount of refund rejected to the petitioner's ECL. Consequently, even according to the respondents' own stand, the petitioner has been deprived both of the refund amount as well as the corresponding credit in the ECL, resulting in manifest arbitrariness and causing serious prejudice to the petitioner. Therefore, on this ground also, the impugned action deserves to be quashed and appropriate directions deserve to be issued in favour of the petitioner.

SUBMISSIONS ON BEHALF OF THE REVENUE :

(26) Learned Assistant Government Pleader, appearing for the respondents, has advanced the following submissions opposing the writ petition.

(27) That the controversy involved in the present petition is required to be examined in the light of the transitional provisions contained in Chapter-XX of the GST Acts, comprising Sections 139 to 142, which constitute a complete code governing the migration from the erstwhile indirect tax regime to the GST regime.

(28) Reference is made to Section 139 of the GST Acts, and it is contended that its provisions merely facilitates migration of existing registered dealers by deeming them to be provisionally registered under the GST enactments so as to ensure continuity of business without requiring fresh registration, whereas Section 140 of the GST Acts, on the other hand, enables an eligible registered person to carry forward the accumulated ITC available under the repealed enactments into the GST regime. According to the respondents, the legislative object underlying Section 140 of the GST Acts is to preserve the accrued credit and permit its utilization for discharge of future GST

liabilities, thereby preventing cascading of taxes and ensuring tax neutrality during the transition. However, the said provision was never intended to permit conversion of such pre-GST credit into cash refund under the GST enactments.

(29) That the statutory distinction between carry forward of ITC and refund of such credit is fundamental to the legislative scheme. Under the erstwhile taxation laws, a dealer possessed an independent statutory remedy for claiming refund of accumulated credit, wherever permissible under the relevant enactment. Parliament has consciously preserved this distinction under the GST Acts by providing that accumulated credit under the existing laws may either be carried forward into the GST regime for future utilization under Section 140 of the GST Acts or be dealt with in accordance with the provisions governing refund under the existing law. The two remedies, according to the respondents, are mutually exclusive and cannot be simultaneously invoked in respect of the same credit.

(30) In this context, reliance has been placed upon Section 142(3) of the GST Acts, which mandates that every claim for refund of tax, duty, interest

or Central Value Added Tax Credit (for short "CENVAT credit") arising under the existing law shall be disposed of in accordance with the provisions of the existing law and any amount eventually found refundable shall be paid in cash. Particular emphasis has been laid upon the second Proviso to Section 142(3) of the GST Acts, which expressly provides that no refund shall be granted in respect of any amount of CENVAT credit, including VAT credit, where the balance thereof, as on the appointed day, has already been carried forward under the provisions of the GST Acts. According to the respondents, the legislative intent behind incorporating the said Proviso is explicit, namely, to prevent duplication of benefits, avoid unjust enrichment and maintain fiscal discipline during the transition from the earlier tax regime to GST.

(31) Proceeding on the aforesaid statutory framework, learned Assistant Government Pleader submitted that, in the present case, the petitioner admittedly accumulated ITC under the provisions of the VAT Act and consciously exercised the statutory option of carrying forward the said accumulated credit by filing Form GST TRAN-1 under Section 140 of the GST Acts. Consequently, the transitional

credit stood credited to the petitioner's ECL under the SGST head and became available for utilization towards discharge of GST liability.

(32) That having voluntarily elected to carry forward the accumulated VAT credit into the GST regime, the petitioner became subject to the statutory embargo contained in the second Proviso to Section 142(3) of the GST Acts. Consequently, the petitioner is precluded from seeking refund of the very same transitional credit under Section 54(3) of the GST Acts.

(33) That the refund application filed by the petitioner under Section 54(3) of the GST Acts for the period from July 2017 to March 2018, though ostensibly made on account of accumulation of ITC arising from an inverted duty structure, included within its ambit the transitional VAT credit carried forward through Form GST TRAN-1. According to the respondents, the said transitional credit admittedly originated under the repealed VAT enactment and not under the GST laws.

(34) That Section 54(3) of the GST Acts authorizes refund only of unutilized ITC accumulated under the GST regime in the limited circumstances expressly contemplated therein,

namely, zero-rated supplies made without payment of tax or accumulation of credit on account of an inverted duty structure. The provision contemplates refund only of credit arising from inward supplies made under the GST enactments and does not extend to credit which merely migrated into the GST regime by virtue of the transitional mechanism contained in Section 140 of the GST Acts.

(35) That the mere reflection of transitional credit in the ECL does not alter its intrinsic character or source. Such credit continues to derive its origin from the erstwhile VAT law and does not become ITC generated under the GST enactments merely because it is reflected in the ECL.

(36) That according to the respondents, acceptance of the petitioner's interpretation would render the second Proviso to Section 142(3) of the GST Acts wholly redundant and defeat the legislative object underlying the transitional provisions contained in Chapter-XX of the GST Acts. It is submitted that the transitional provisions have been enacted as a self-contained code governing migration of rights and liabilities from the erstwhile tax regime and are intended to ensure seamless transition while simultaneously preventing duplication of fiscal benefits.

(37) That permitting refund of transitional VAT credit under Section 54(3) of the GST Acts would also seriously disturb the fiscal architecture contemplated under the GST regime. Taxes collected under the erstwhile VAT enactments formed part of the revenue of the respective State Governments, whereas refunds under the GST regime are governed by an entirely different statutory mechanism involving settlement and apportionment between the Union and the States. Parliament, therefore, consciously restricted refund of pre-GST credit to the framework of the existing laws and expressly incorporated the second Proviso to Section 142(3) of the GST Acts to avoid unintended revenue outflow and maintain fiscal equilibrium. It is, therefore, submitted that rejection of the petitioner's claim for refund of the transitional VAT credit is fully consistent with the statutory scheme and legislative intent underlying the GST Acts.

(38) That the petitioner's claim is misconceived even on a plain reading of Section 54(3) of the GST Acts. It is contended that the expression employed therein, namely, "*where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies*", unmistakably contemplates accumulation of ITC

generated under the GST regime on account of an inverted duty structure during the relevant tax period.

(39) According to the respondents, the transitional VAT credit carried forward by the petitioner through Form GST TRAN-1 does not owe its origin to any inverted duty structure under the GST enactments. It merely represents the closing balance of ITC standing to the petitioner's account under the erstwhile VAT Act as on the appointed day, which came to be migrated into the GST regime by virtue of Section 140 of the GST Acts. Such credit, therefore, cannot be equated with ITC accumulated under the GST enactments for the purposes of Section 54(3) of the GST Acts.

(40) That a conjoint reading of Sections 2(62), 2(63) and 54(3) of the GST Acts clearly demonstrates that the statutory mechanism for refund under Section 54(3) of the GST Acts is confined to unutilized Input Tax Credit arising from "input tax" levied under the GST enactments and only in the two contingencies expressly specified therein, namely, zero-rated supplies made without payment of tax and accumulation of credit on account of an inverted duty structure. Consequently, while processing the petitioner's

refund application, the respondents rightly sanctioned refund in respect of the ITC accumulated under the GST regime on account of the inverted duty structure, but rejected the component representing transitional VAT credit carried forward from the erstwhile regime.

(41) Learned AGP has also invited attention to Rule 89(5) of the GST Rules, which prescribes the formula for computation of refund arising from an inverted duty structure. Particular emphasis has been placed upon Explanation (a) thereto, which defines "Net ITC" to mean "*Input Tax Credit availed on inputs during the relevant period*." It is submitted that the expression "during the relevant period" assumes considerable significance, inasmuch as the transitional VAT credit carried forward through Form GST TRAN-1 was admittedly not availed during the relevant tax period, namely July, 2017 to March, 2018, on account of taxable inward supplies received under the GST enactments. Rather, it constituted a pre-existing balance standing to the petitioner's credit as on 30.06.2017, which was merely migrated into the GST regime through the statutory transitional mechanism. Such credit, therefore, falls outside the ambit of "Net ITC" contemplated under Rule 89(5) of the GST Rules and

cannot be considered while computing refund under Section 54(3) of the GST Acts.

(42) That the petitioner's reliance upon Section 49(4) of the GST Acts is equally misconceived. According to the respondents, Sections 49 and 54 of the GST Acts operate in entirely different fields and serve distinct legislative purposes. While Section 49 of the GST Acts forms part of the machinery provisions governing payment of tax and utilization of ITC, Section 54 of the GST Acts is a substantive provision conferring a limited statutory right to claim refund, subject to the conditions expressly stipulated therein. The conditions regulating utilization of credit cannot, therefore, be imported into the provisions governing refund.

(43) Attention has been invited to Section 49(4) of the GST Acts, which provides that the amount available in the ECL may be utilized towards payment of output tax under the CGST Act or the Integrated Goods and Services Tax Act, 2017 in the prescribed manner and subject to the prescribed conditions and restrictions. It is submitted that a plain reading of the provision leaves no manner of doubt that it is merely an enabling provision authorizing utilization of the credit available in

the ECL towards discharge of output tax liability. Neither Section 49(4) nor Section 49(5) of the GST Acts creates or recognizes any independent right to claim refund of such credit.

(44) Elaborating the aforesaid submission, learned Assistant Government Pleader contended that the legislature has consciously employed the expression "*may be used for making any payment towards output tax*" in Section 49(4) of the GST Acts and has conspicuously refrained from using expressions such as "*may be refunded*" or "*may be claimed as refund*." The omission is deliberate and reflects the legislative intent that availability of credit for utilization does not *ipso facto* confer an entitlement to seek refund thereof.

(45) That in the present case, the petitioner validly carried forward the accumulated VAT Input Tax Credit under Section 140 of the GST Acts by filing Form GST TRAN-1, whereupon the said amount became part of the ECL and was available for utilization towards payment of output tax in terms of Section 49(4) of the GST Acts. However, the mere fact that transitional credit is capable of being utilized for discharge of GST liability cannot lead to the inference that it also becomes refundable under Section 54(3) of the GST Acts. Utilization of

ITC and refund thereof are two distinct statutory concepts governed by different provisions, operating in different fields, subject to different conditions and intended to achieve different legislative objectives. Any interpretation equating the right of utilization with a right to claim refund would not only be contrary to the plain language of the statute but would also render the carefully structured transitional provisions contained in Chapter XX of the GST Acts otiose.

(46) Learned AGP further submitted that the legislative intent underlying Sections 140 and 49(4) of the GST Acts is to ensure a seamless transition from the erstwhile indirect tax regime to the GST regime by preserving eligible accumulated credits and permitting their utilization towards discharge of future GST liabilities. The object of these provisions is to prevent cascading of taxes and to ensure that legitimate credits earned under the repealed enactments do not lapse merely on account of the introduction of the GST regime.

(47) That Section 54(3) of the GST Acts, however, operates in an altogether different field. The said provision carves out a limited exception by permitting refund of unutilized ITC only in the

contingencies expressly enumerated therein, namely, zero-rated supplies made without payment of tax and accumulation of credit on account of an inverted duty structure under the GST enactments. Refund, therefore, is not an inherent or automatic consequence of every credit balance reflected in the ECL.

(48) That according to the respondents, acceptance of the petitioner's interpretation would obliterate the clear distinction consciously maintained by Parliament between utilization of credit and refund of credit, besides rendering the second Proviso to Section 142(3) of the GST Acts wholly otiose. The said Proviso, in unequivocal terms, prohibits grant of refund in respect of any credit, the balance whereof, as on the appointed day, has already been carried forward under the GST enactments.

(49) Learned AGP submitted that a harmonious reading of Sections 49(4), 54(3), 140 and 142(3) of the GST Acts unmistakably reveals the legislative design governing transitional credit.

(50) That the ITC relatable to capital goods may be utilized towards discharge of output tax liability in accordance with Sections 16 and 49 of

the GST Acts. However, refund under Section 54(3) of the GST Acts on account of an inverted duty structure is confined only to accumulation arising from "inputs" and does not extend to credit attributable to capital goods.

(51) Reference is made to the provision of Section 49(4) of the GST Acts, and it is submitted that the same provides that the balance available in the ECL "may be used for making any payment towards output tax", whereas Section 54 of the GST Acts confers only a limited statutory right to seek refund in the specific situations contemplated therein. The legislative distinction between utilization and refund is, therefore, both deliberate and substantive.

(52) Accordingly, it is contended that if the petitioner's interpretation were to be accepted, every amount reflected in the ECL would become refundable merely because it is capable of utilization. Such an interpretation would not only obliterate the distinction consciously maintained by Parliament between utilization and refund but would also render the second Proviso to Section 142(3) of the GST Acts redundant, contrary to the settled principle that every provision of a statute must be construed in a manner that gives effect to

all its parts and avoids rendering any provision superfluous or otiose.

ANALYSIS OF THE STATUTORY FRAME WORK GOVERNING TRANSITIONAL ITC :

(53) The issue raised in the writ petition is though concise, but it takes within its ambit various provisions regulating the claim of refund of ITC under GST regime after its transition from erstwhile tax regime. The accumulated ITC of the petitioner of Rs.23,74,689/- under the VAT regime was transferred to GST regime with effect from 01.07.2017, under Section 140 of the GST Acts by filing Form GST TRAN-1 under Rule 117 of the GST Rules. Consequently, the said transitional credit stood reflected in the petitioner's ECL in July, 2017. Accordingly, for the period from 01.07.2017 to 31.03.2018, the petitioner accumulated excess ITC aggregating to Rs.28,54,987/-. Out of Rs.28,54,987/-, the petitioner preferred an application for refund of SGST amounting to Rs.23,50,000/- in Form GST RFD-01A under Rule 89 of the GST Rules.

(54) Vide communication dated 09.10.2019, respondent No.2 sanctioned refund of only Rs.4,75,324/- out of the total claim of Rs.23,50,000/-. Simultaneously, respondent No.2 issued Payment Advice in Form GST RFD-05 dated

09.10.2019, pursuant to which the aforesaid amount of Rs.4,75,324/- came to be credited to the petitioner's bank account. Consequently, respondent No.2 rejected the balance refund claim of Rs.18,74,676/-.

(55) The claim of refund of ITC of Rs.18,74,676/- has been rejected by the Department by invoking the second Proviso to Section 142(3) of the GST Acts, which expressly prohibits grant of refund in respect of any credit which has been carried forward under Section 140 of the GST Acts.

(56) The response to the issues raised before us finds place in combined reading of the various provisions governing the transitional phase from erstwhile tax regime to GST regime.

(57) Chapter-XX of the GST Acts reckons the transitional provisions. Section 139 of the GST Acts provides for migration of registered taxpayers of the then existing taxing laws of Central and State such as Central Excise duty, Service tax, State Sales tax, VAT etc. to GST regime. Section 140 of the GST Acts prescribes the transitional arrangements for ITC, which protects the interest of tax payers and enables carrying forward of ITC available under the existing law subject to

fulfillment of the conditions mentioned therein. The refund of credit was always available for the tax payers under the existing laws. However, the utilization of such credit under the GST is further restricted under Section 142 of the GST Acts.

(58) The claim of refund of ITC of Rs.18,74,676/- has been rejected by the Department by invoking the second Proviso to Section 142(3) of the GST Acts, which expressly prohibits grant of refund in respect of any credit which has been carried forward under Section 140 of the GST Acts. Section 142(3) of the GST Acts reads as under:

> *"**SECTION 142 : Miscellaneous transitional provisions***
>
> *(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944):*
>
> ***Provided** that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:*
>
> ***Provided** further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act."*

(59) Section 142 of the GST Acts deals with the Miscellaneous transitional provisions governing the

ITC. Section 142(3) of the GST Acts stipulates that the claim of refund of any amount of credit,duty, tax, interest or any other amount paid under the existing laws, i.e VAT, etc, shall be disposed of in accordance with the provisions of such laws, i.e, VAT, etc, and the amount accruing shall be paid in cash. The first Proviso, provides of lapsing of fully and partially rejected credit of existing law(VAT), whereas, the second Proviso restricts / debars claim of refund of the amount of CENVAT Credit (VAT), where the balance of the said amount has been carried forwarded under the GST Acts. Thus, GST regime never placed any restriction on the tax payers of erstwhile regime to claim refund of credit even prior to or after the implementation of GST regime. The legislature in order to secure the interest of tax payers enacted the generous provision of Section 142(3) of the GST Acts to give the amount of credit in cash by processing their claims as per the existing laws. However, the second Proviso to Section 142(3) of the GST Acts restricts the claim of refund in those cases, wherein the balance of credit has been carried forwarded.

(60) The respondents have refused refund of the transitional VAT credit carried forward by the

petitioner through Form GST TRAN-1 in light of the second Proviso. It is the case of the petitioner, that it is entitled to the refund of ITC under the GST Acts, since on acceptance of TRAN-1 form, the ITC available under VAT regime becomes part of GST regime under section 54(3) of the GST Acts. The relevant provisions of Section 54 of the GST Acts are extracted as under:

> *"**SECTION 54 : Refund of tax***
>
> *(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:*
>
> *Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.*
>
> *(2) ……..*
>
> *(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:*
>
> *Provided that no refund of unutilised input tax credit shall be allowed in cases other than*
>
> *(i) zero rated supplies made without payment of tax;*
>
> *(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:*
>
> *... ... ... "*

(61) Section 54(3) of the GST Acts recognizes the claim of unutilized ITC with restrictions stipulated under the Provisos. Section 49 under Chapter-X of the GST Acts regulates the payment of tax, interest, penalty and other amounts. Section 49(1) of the GST Acts mentions about credit of the amounts in ECL. Section 49(3) of the GST Acts directs that the amount available in the Electronic Cash Ledger may be used for making payment towards tax, interest, etc., for any amount under the provisions of the GST Acts. Section 49(4) of the GST Acts stipulates that the amount available in Electronic Credit Ledger may be used for making any payment towards output tax under GST or IGST in such manner and subject to conditions as may be prescribed. Section 49(6) of the GST Acts permits the balance in the Electronic Cash Ledger or Electronic Credit Ledger under GST or the Rules to be refunded in accordance with Section 54.

(62) Chapter-XI of the GST Acts encompasses Section 54 which governs refund of tax. Thus, it is apparent from combined reading of the scheme of section 49(4) and section 54(3) of the GST Acts that Section 49(4) allows the amount in Electronic Credit Ledger to be “utilized for the purpose of making payment towards output tax”, whereas Section

54(3) permits claim of refund in two circumstances enumerated therein. Firstly, in case of zero-rated supplies made without payment of tax, and Secondly, on inverted tax structure. The calculation of the refund in both these circumstances is governed by the formulas provided under Rule 89(4) and (5) of the GST Rules. The first Proviso to Section 54 before the 01.10.2022 amendment mentions that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed. Sub-section(6)of Section 49 clarifies that " The balance in the electronic cash ledger or electronic credit ledge after payment of tax, interest, penalty, fee or any other amount payable under "this Act" or the rules made thereunder may be refunded in accordance with the provisions of Section 54". Thus, Sub-section (6) mentions the refund of balance of credit payable under "this Act or the Rules" as per Section 54. This shows that the parliament never intended the refund of credit accumulated under erstwhile regime as per Section 54, but only under GST regime.

CONCLUSION:

(63) A holistic reading of the aforesaid provisions cements the intention of the

legislature. The legislature unequivocally intended that a registered taxpayer's claim to ITC, spanning both the pre-GST and post-GST regimes, should not be frustrated. However, a clear demarcation exists between the utilization and the refund of ITC. The legislative intent dictates that the GST regime permits the utilization of accumulated ITC from the erstwhile regime for output tax liability only if it is successfully transitioned into the ECL. Conversely, cash payment of accumulated credit from the erstwhile regime is permissible only upon filing a refund claim. Thus, a taxpayer can either seek a refund under the existing laws to be paid in cash under Section 142(3) of the GST Acts, or choose to transit the credit. If the accumulated credit is carried forward, the statutory bar under the second Proviso to Section 142(3) of the GST Acts gets triggered, making refund impermissible. Taxpayers migrating to the GST regime cannot pursue both avenues concurrently or interchangeably. They must choose either receipt of a cash refund of the pre-GST accumulated credit or to transit the balance into the GST regime; if they choose the latter, they forfeit the refund claim but retain the right to utilize the credit. This intent of Section 142(3) is implicit from 1st Proviso, which instructs the lapsing of credit on partial or fully

rejection, on the claim of refund of credit under old regime under the main Section 142(3), whereas the 2nd Proviso restricts claim of refund of credit, if the credit is transitioned. The petitioner cannot claim refund of credit under the provisions of old regime, on transitioning of the credit. Such claim is restricted only under Section 143(3) and rejection/allowance of credit claimed under Section 143(3) is governed by 1st proviso. Merely because the transit/transfer is permitted by TRAN-1 to GST regime, such transfer of credit will not *ipso facto* make the credit worthy of refund under Section 54(3). The legislature has introduced an exclusive Chapter regulating transition of credit from former regime to GST. Ultimately, Section 142(3) of the GST is a check to ensure a taxpayer does not claim a refund of the erstwhile regime once that credit has been carried forward and transitioned into the GST framework. The petitioner cannot insist on refund of transitioned GST *de hors* the statute.

(64) We may now deal with the decisions cited on behalf of the petitioner. The petitioner has primarily placed reliance on the judgement of this Court in the case of ***Torrent Pharmaceuticals Ltd. (supra)***. The facts and discussion of law in the

said judgement indicate that there was no issue raised before the Coordinate Bench of this Court regarding the operation of the provision of section 142(3) of the GST Acts and the entire case was premised on the refund of the Zero rated supplies, which was refused on the ground that no balance was available in the ECL of which the taxpayer was entitled to get refund. Thus, the said decision will not apply to the issue on the facts examined by us in the present petition.

(65) In the case of ***Weatherproof Solution (supra)***, the Coordinate Bench has exclusively placed reliance on the judgement rendered in the case of ***Torrent Pharmaceuticals Ltd.(supra)***, and ultimately while allowing the writ petition, this Court had directed the authorities to process the refund claim in accordance with provisions of the VAT Act read with section 174(2)(c) of the GST Acts. The issue with regard to the applicability of section 142(3) of the GST Acts was also not examined by this Court in the said judgement. This Court never directed the respondent authorities to proceed the refund claim under the GST Act. The issue raised before us in the present writ petition was never examined by this Court in the case of ***Weatherproof Solution (supra).***

(66) Similarly, the Division Bench of this Court in the case of ***Ford India Pvt. Ltd. (supra)*** has again followed the judgement rendered in the case of ***Torrent Pharmaceuticals Ltd.(supra)***. The case of ***Ford India Pvt. Ltd. (supra)*** suggests that the GST authorities did not sanction the refund since the petitioner did not transfer the CENVAT Credit (VAT) on 28.08.2017 i.e. after the cut-off date of 01.07.2017. In the case of Ford India Private Limited, the GST authorities, in fact, had ordered recovery after setting aside this sanction of the refund since the taxpayer was sanctioned such amount by utilizing the transitional credit as on 01.07.2017.

(67) Thus, the decisions cited before us will not rescue the present petitioner in light of the second Proviso to Section 142(3) of the GST Acts.

(68) We may also refer to the clarification issued by the respondent Department of Revenue, Central Board of Excise and Customs vide Circular No.37/11/2018-GST dated 15.03.2018 clarifying the refund issues on export. Paragraph No.10 therein deals with the provisions of section 142(3), (4) and (5) of the GST Acts relating to refund of taxes paid under existing laws. The same reads as thus:

"10. Refund of taxes paid under existing laws: Sub-sections (3), (4) and (5) of section 142 of the CGST Act provide that refunds of tax/duty paid under the existing law shall be disposed of in accordance with the provisions of the existing law. It is observed that certain taxpayers have applied for such refund claims in FORM GST RFD-01A also. In this regard, the field formations are advised to reject such applications and pass a rejection order in FORM GST PMT-03 and communicate the same on the common portal in FORM GST RFD-01B. The procedures laid down under the existing laws viz., Central Excise Act, 1944 and Chapter V of the Finance Act, 1994 read with above referred sub-sections of section 142 of the CGST Act shall be followed while processing such refund claims.

10.1 Furthermore, it has been brought to the notice of the Board that the field formations are rejecting, withholding or re- crediting CENVAT credit, while processing claims of refund filed under the existing laws. In this regard, attention is invited to sub-section (3) of section 142 of the CGST Act which provides that the amount of refund arising out of such claims shall be refunded in cash. Further, the first proviso to the said sub- section provides that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse and therefore, will not be transitioned into GST. Furthermore, it should be ensured that no refund of the amount of CENVAT credit is granted in case the said amount has been transitioned under GST. The field formations are advised to process such refund applications accordingly."

(69) As clarified in the Circular, where the claim of refund of CENVAT Credit (VAT) is fully or partially rejected, the amount so rejected shall lapse and, therefore, will not be transitioned into the GST and no refund of the amount of CENVAT credit (VAT) is granted in case, the said amount has been transitioned under the GST. Thus, the intention of the Department of Revenue is explicit

that once the credit of erstwhile regime is transitioned under the GST, no refund of such credit is granted or allowed.

(70) The Petitioner has also alleged violation of Rules 92 and 93 of the GST Rules. It is contended that the action of the respondent in refusing to refund the ITC is required to be quashed and set aside, since no opportunity of hearing has been given to the petitioner as per the provisions of Rule 92 of the GST Rules. It is submitted that as per the Proviso to sub-rule (3) to Rule 2 of the GST Rules, an opportunity of hearing is mandatory in case the application for refund is required to be rejected. Additionally, it is submitted that, as Per Rule 93 of the GST Rules, where any amount seeking refund of the credit is rejected under Rule 92 of the GST Rules, either fully or partly, the amount debited to the extent of rejection, is required to be re-credited to the ECL under Form GST PMT-03, which is also not done by the respondent Department.

ASPECT OF OPPORTUNITY OF HEARING UNDER RULE 92 :

(71) Adverting to the alleged violation of Rule 92 of the GST Rules, which mandates the affording of an opportunity of hearing, it is undisputed that the same was not offered to the petitioner prior to

the rejection of transitional ITC refund claim. Nonetheless, as the petitioner has raised extensive legal contentions regarding the operation of the statutory framework governing ITC refunds and utilization, setting aside the impugned action and remanding the issue for re-examination, exclusively on this ground would be an exercise in futility. The petitioner has claimed refund of credit by inviting this Court's definitive findings on the operation of statutory provisions which is a pure legal issue. Given that the petitioner has articulated the claim through pleadings, oral and written submissions, and the respondents have clarified their stance for refusal, relegating the matter back to the authorities for reconsideration, after obtaining the opinion of this Court, would constitute a mere empty formality.

(72) As far as the compliance of Rule 93 of the GST Rules *apropos* re-crediting of the amount of credit in the ECL is concerned, during the course of hearing, the learned AGP has tendered the communication dated 16.06.2026, wherein the Deputy Commissioner of State Tax (for), Range-8, Mahesana, has clarified that if the petitioner files an application before the concerned authority for re-credit of the amount in ECL, the respondent

Department will pass an order under Form GST PMT-03 and will re-credit the amount in the ECL. Thus, so far as **prayer "B"** of the writ petition is concerned, the grievance of the petitioner gets satisfied in view of the submissions made before us by the learned AGP, and in light of the communication dated 16.06.2026.

(73) As per the provisions of Rule 93 of the GST Rules, the respondent authorities, while partly rejecting the claim of the petitioner for refund, ought to have re-credited the amount of credit to the ECL under an order made in Form GST PMT-03. However, since the respondent authorities have also raised doubts regarding the claim of the petitioner under the ITC for want of documents, it is directed that, if an application is made by the petitioner for re-crediting of the amount in his ECL, the respondent authorities shall examine such application and process the same after due verification of the relevant facts and records, in accordance with the statutory requirements.

(74) Thus, upon an overall appreciation of the statutory frame work governing the refund and utilization of transitional ITC under the GST Acts, we are of the considered opinion that the

petitioner is entitled to re-credit of the said amount to their ECL for utilization, a course of action which the respondents themselves have evinced an intention to pursue. Consequently, the writ petition succeeds in part. **Prayer "B"** of the petitioner shall stand satisfied upon the petitioner making an application for re-credit. The respondents are directed to examine the petitioner's case in accordance with the governing statutory provisions. In the event it is found that the ITC is required to be re-credited, an appropriate order for re-crediting such amount under Form GST PMT-03 shall be passed within a period of 12 weeks from the date of receipt of a certified copy of this Court's order.

Sd/- .
(A.S.SUPEHIA, J)

Sd/- .
(VAIBHAVI D. NANAVATI,J)

***

Bhavesh-[PPS] and Neha-[PS]**