CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. III

Service Tax Appeal No.51678 Of 2022

[Arising out of Order-in-Appeal No. 04/2022-23 dated 02.05.2022 passed by the Commissioner (Appeals) of Central Goods and Service Tax, New Delhi]

TV Today Network Limited : **Appellant**
F-26, First Floor, Connaught Circus, New Delhi-110001

Vs

Principal Commissioner of CGST, Delhi South : **Respondent**
2nd & 3rd Floor, EIL Annexe Building, Plot-2B
Bhikaji Cama Place, New Delhi-110066

APPEARANCE:
Ms. Shagun Arora, Ms. Shreya Khunteta and Shri Kunal Agarwal, Advocates for the appellant.

Shri Dhirendra Singh Garbyal, Authorised Representative of the Department

CORAM :
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 51214/2026

Date of Hearing:01.06.2026

Date of Decision: 21.07.2026

HEMAMBIKA R. PRIYA

M/s TV Today Network Limited[1] was registered under the erstwhile service tax regime for paying service tax. Thereafter, with the introduction of the Goods and Services Tax, the appellant applied for GST registration. In terms of Section 140 of the Central Goods and

1 **The appellant**

Services Tax Act, 2017 ('CGST Act), the Appellant filed Form TRAN-1 and transitioned Rs. 1,78,51,393/-, which was the closing balance of CENVAT Credit as reflected in the ST-3 return filed on 14.08.2017. Subsequently, the appellant realised that the credit of Rs. 2,13,30,499/- vis-à-vis few input service invoices were not reported in the original ST-3 returns. Accordingly, the Appellant filed a revised ST-3 return on 29.09.2017 and reported a closing balance of Rs. 3,58,51,283/-. Consequent thereto, the appellant filed a refund claim of Rs. 2,13,30,499/- under Section 142(9)(b) the CGST Act on 28.02.2018. The said refund application was rejected vide an ex-parte order dated 23.06.2020 alleging the inadmissibility of credit on some services as well as on the ground of various discrepancies found in the invoices. Aggrieved by the same, the appellant filed an appeal before the Appellate Authority, who vide Order-in-Appeal dated 31.03.2021 remanded the matter back to the adjudicating authority to decide refund application afresh after providing an opportunity of hearing to the appellant, subsequently, a show cause notice was issued proposing to deny refund of Rs. 2,13,30,499/- on the ground that Appellant had belatedly filed revised Form ST-3 return by one day, which resulted in contravention to Section 142(9)(b) of the CGST Act. The said show cause notice was confirmed by the Order-in-Original dated 09.11.2021which was upheld by the impugned order. Aggrieved, the present appeal has been filed by the appellant.

2. Learned counsel for the appellant submitted that vide the impugned appellate order, the refund of Cenvat credit of Rs. 2,13,30,499/- was denied on the ground that the revised ST-3 return

was filed after the expiry of the prescribed period of 45 days under Rule 7B of the ST Rules, thereby in contravention of Section 142(9)(b) of the CGST Act. The original ST-3 return was filed on 14.08.2017, whereas the revised return was filed on 29.09.2017, which are undisputed facts. Learned counsel contended that as per the Department, the proviso to Rule 7B of the Service Tax Rules, 1994 required that a return filed under Rule 7 of the ST Rules could be revised within 45 days from the date of filing the original return. Learned counsel contended that it was on this basis, that the impugned order has held that the revised return was filed on the 46th day resulting in delay of one day. Consequently, the refund under Section 142(9) of the CGST Act has been rejected. Learned counsel further submitted that nowhere in the proceedings, did the Department allege the inadmissibility of the Cenvat credit of Rs. 2,13,30,499/-. The only allegation was the delay in filing of the revised ST-3 return and not carrying forward the said amount by way of filing a revised GST Form Tran-1.She submitted that pertinent to highlight that the delay in filing revised ST-3 return or non-filing of GST Form Tran-1 was merely a procedural lapse and the same cannot be the basis for rejecting the impugned refund. Learned counsel further submitted that under the service tax regime, filing of returns was stipulated in terms of Rule 7 of the ST Rules. Further, revision of the returns was stipulated under Rule 7B of the ST Rules. A combined reading of the said two provisions, it is evident that ST-3 returns were required to be filed under the service tax regime were to be filed by 25th of the month following the half year. Further, service tax assesses were permitted to revise their returns within the period stipulated under Rule 7B. For the period April 2017 to June 2017, it was prescribed that a return could be amended within 45 days from the date of filing of the original return.

2.1 Learned counsel for the appellant also submitted that Rule 7C prescribes the levy of late fee for delayed filing of returns under Rule 7. She contended that the said provision must be interpreted in a manner that gives effect to the overall scheme of return filing under the Service Tax Rules. Although Rule 7C specifically referred to Returns under Rule 7, the same cannot be read in isolation so as to exclude revised returns fumished under Rule 7B. Learned counsel also stated that a revised return, once filed in accordance with Rule 7B, substitutes and relates back to the original return and, therefore, assumes the same legal character as a return filed under Rule 7 in substance. Further, learned counsel contended that the statute did not contemplate two independent categories of returns and recognizes only one return, which could be corrected within the prescribed time limit. Accordingly, she submitted that the expression "return under Rule 7" in Rule 7C must be construed broadly to include such revised returns. A delay of one day in revising the return could be regularized by imposition of late fee of Rs. 500. Once such late fee is imposed, the delay would be regularized. She placed reliance on the judgment of the Meghalaya High Court in **Commissioner of Goods and Services Tax** versus **M/s Amrit Cement Limited**[2], wherein the High Court held that Cenvat credit cannot be denied on the ground of delay filing

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2 2022 (62) G.S.T.L. 257 (Meghalaya)

of return as the same can be regularised on payment of late fee. The refund under Section 142(9) of the CGST Act cannot be rejected on account of a procedural lapse which can be rectified by imposition of latefee. Hence, the refund has been incorrectly denied. She also relied upon the following decisions:-

- **GE Power Systams India Pvt. Ltd. Versus Commissioner of Service Tax, Ahmedabad[3]**
- **Bharat Electricals Ltd. v. Commissioner of C.T., Secunderabad[4]**
- **Eicher Motors Ltd. and Another v. Union of India and Others[5]**
- **NU Vista Ltd. Versus Commissioner (Appeals), CGST, C. Ex., Raipur[6]**
- **Slovak India Trading Co. Pvt.Ltd.- 2008 (10) STR 101-2006-VIL-53-KAR-CE (maintained in Supreme Court at 2008 (223) E.L.T. A170 (S.C.) - 2007-VIL-43-SC-CE]**
- **Rama Industries Ltd versus Commissioner Of Central Excise, Chandigarh[7]**
- **M/s. Diaspark Infotech Pvt. Ltd. versus CGST, CE & CC, Indore[8]**
- **Punjab National Bank Versus Commissioner of C.T., Bangalore North[9]**
- **Punjab National Bank Versus Commissioner, Central Goods and Service Tax, Central Excise, Jaipur, Rajasthan[10]**
- **Punjab National Bank Versus Commissioner of CGST, Dehradun[11]**

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3 (2024) 25 Centax 355 (Tri.- Ahmd)
4 [2020 (41) G.S.T.L. 465 (Tri. Hyd.)]
5 (1999) 2 SCC 361 1999 (106) E.L.T. 3 (S.C.)]
6 2022 (381) E.L.T. 681 (Tri. Del.)
72009-VIL-152-P&H-CE
82019 (2) TMI 948 -CESTAT New Delhi
92021 (52) G.S.T.L. 421 (Tri. - Bang.)
10 2022 (67) G.S.T.L. 467 (Tri. Del.)

- **Lupin Limited Versus Commissioner of GST & Central Tax, Aurangabad Commissionerate, Nashik[12]**

Learned counsel also submitted that revised return was filed within the prescribed period and accordingly, the conditions prescribed under Section 142(9)(b) of the CGST Act has been fulfilled. In the instant case, there is no dispute with respect to the fulfilment of any of the aforesaid condition except the condition specified at 'b' i.e., revised ST-3 return was not filed within time specified under existing law. As per the department the Appellant had filed the revised ST-3 return after a delay of one day as the due date for filing ST-3 return expired on 28.09.2017, whereas the same was filed on 29.09.2017. The appellant had filed the revised ST-3 within the time specified under the existing law. She relied on the Circular No. 207/5/2017-ST dated 28.09.2017 ('Circular') issued by CBIC, wherein it was clarified that all ST-3 returns filed for the impugned period on or before 31.08.2017 shall be deemed to be filed on 31.08.2017 and accordingly, the assesses will have more time to file revised ST-3 returns. All the conditions specified under Section 142(9)(b) of the CGST Act has been satisfied and accordingly the Appellant is entitled for the cash refund.

2.2 Learned counsel further submitted that the appellant is entitled to receive the interest on delayed refund of the cenvat credit availed on input services in terms of Section 11BB of the Act. In this regard, she relied upon the following decisions:-

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11 2026 (1) TMI 425-CESTAT New Delhi
12 Final Order No. A/85393/2024 dated 09.09.2024, CESTAT Mumbai

- **Ranbaxy Laboratories Ltd. Versus Union of India and Ors**[13]

- **M/s. Fabrimax Engineering Pvt. Ltd. Versus Commissioner of Central Excise, Nagpur** [14]

- **M/s Microsoft Corporation (India) Pvt. Ltd. (Microsoft) Versus The Commissioner of Service Tax, Delhi, The Commissioner of Central Excise and Service Tax, Gurgaon-1 (Vice Versa) Final Order Nos. 60214-60217/2024 dated 03.05.2024 -CESTAT Chandigarh**

- **Commissioner of Central Tax, Bengaluru versus Netap India Pvt. Ltd.**[15]

2.3 In the erstwhile order, the refund was rejected on the ground that the Cenvat credit was inadmissible. However, while issuing the show cause notice post the remand order. The department treated the proceedings as fresh proceedings and proposed to reject the refund on the ground of delay in filing revised ST-3 returns. This allegation was never raised in the earlier proceedings. It is settled principle of law that in the remand proceedings, the department cannot altogether initiate new proceedings basis new allegations. In support of his contention, learned counsel relied upon the following cases:

- **Commissioner Of Customs (Import), Mumbai versus Voith India Pvt. Ltd. 2009**[16] **affirmed by Hon'ble Supreme Court in Commissioner India Pvt. Ltd. - 2010 (254) E.L.T. A75 (S.C.)**

- **Voith Paper Products Ltd. versus CCE, Mumbai**[17]

- **Chopra Electricals Versus Commissioner Of Central Excise, Delhi-I**[18]

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13 [2011] 33 STT 326 (SC)
14 2022 (379) E.L.T. 604 (Bom.)
15 2020 (32) G.S.T.L. 176 (Kar.)
16 2020 (32) G.S.T.L. 176 (Kar.)
17 2007 (214) E.L.T. 161 (S.C.)
18 2017 (357) E.L.T. 768 (Tri. - Del.)

2.4 She prayed that the impugned order may be set-aside and refund be granted.

3. Learned Authorized Representative for the Department submitted that provisions of Section 142(9)(b) of the CGST Act, 2017, read with Rule 7B of Service Tax Rules, 1994 as per which the revised return had to be filed within the time limit specified for such revision. Under the existing law, the specified tinge limit in the existing law is given in the proviso to Rule 7B of Service Tax Rules, 1994. As the Appellant had revised their ST-3 return on 46th day of the filing of the original return (14.08.2017), the same was not admissible. In the instant case, the appellant had failed to comply with the required conditions especially non-submission of invoices, despite repeated requests in writing including proof of payments. In fact, the Appellant was not able to produce desired documents needed for availing CENVAT Credit despite specific observation on appellant's non-production of record before Adjudicating Authority made by the Commissioner (Appeals) in the remand order dated 23.09.2021. Learned Authorized Representative contended that refund claim of appellant was liable to be summarily dismissed on law point itself as the Revised Return had not been filed as per time limit (within 45 days) provided in Section 142(9) (b) of the CGST Act, 2017 read with Rule 7B of the Cenvat Credit Rules, 2004. As per Section 142(9)(b), the admissibility of Cenvat Credit was to be verified before processing of refund claim for which conditions provided under the Rule 9 & Rule 2(1) of the Cenvat Credit Rules, 2004, are to be fulfilled which the

appellant had failed to substantiate, and had not submitted the relevant documents despite several opportunities given by the Adjudicating Authority or the refund Sanctioning Authority. While submitting documents before the Adjudicating Authority post remand, the appellant had only re-iterated what was already informed to the Adjudicating Authority in the proceedings which led to rejection of the refund claim vide order dated 23.06.2020 on account of non-fulfilment of conditions as prescribed under the Rule 9 of the CCR.2004, read with Rule 2(1) of the Cenvat Credit Rules, 2004.As regards the admissibility of enhanced Cenvat credit under the Revised Returns filed on 29.09.2017, the incremental credit was not allowed (for transiting as also refund) as per Section 140(8) of CGST Act,2017. The intent of the law maker was not to give benefit of enhanced credit in Revised Return especially Refund.

4. We have heard the Ld Counsel for the appellant and the Ld AR for the department, and perused the records of the case. The issue before us is the eligibility of the appellant to refund of the Cenvat credit under section 142 of the CGST Act, 2017.

4.1 In order to appreciate the submissions, it would be appropriate to reproduce the relevant section and thereafter address the submissions of the Ld Counsel and the Ld AR. The said provision is reproduced hereinafter:-

> **"Section 142. Miscellaneous transitional provisions.-**
> (1) Where any goods on which duty, if any, had been paid under the existing law at the time of removal thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered person shall be eligible for refund of the duty paid under the existing law where such goods are returned by a person, other than a registered person, to the said place of business within a period of six months from the appointed

day and such goods are identifiable to the satisfaction of the proper officer:

Provided that if the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply.

(2) (a) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act;

(b) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised downwards on or after the appointed day, the registered person who had removed or provided such goods or services or both may issue to the recipient a credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such credit note shall be deemed to have been issued in respect of an outward supply made under this Act:

Provided that the registered person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has reduced his input tax credit corresponding to such reduction of tax liability.

(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.

(4) Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:
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.

(5) Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided 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).
(6) (a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him 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) and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

Provided 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;

(b) every proceeding of appeal, review or reference relating to recovery of CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law and if any amount of credit becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(7) (a) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of duty or tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(b) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and any amount found to be admissible to the claimant shall be refunded to him 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) and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

(8) (a) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act

and the amount so recovered shall not be admissible as input tax credit under this Act;

(b) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

(9) (a) where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

(b) where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

(10) Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.
(11) (a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994 (32 of 1994);

(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994 (32 of 1994), tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

(12) Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day:

Provided that the said period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act, and are returned after a period specified in this sub-section:

Provided also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within a period specified in this sub-section.

(13) Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under any law of a State or Union territory relating to Value Added Tax and has also issued an invoice for the same before the appointed day, no deduction of tax at source under section 51 shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day."

4.2 A plain reading of the said section reveals that it is a transitional provision dealing with pending and post-transition refund claims relating to pre-GST indirect taxes (central excise, service tax, customs/CENVAT). We note that the refund aspect is primarily in sub-section (3), which creates a special regime for refund of credit of duty/tax that existed under the "existing law" but could not be carried forward or utilized in the GST regime.

4.3 As per the text and scheme of section 142, it broadly provides for the following:

(i) 142(1): 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 or interest under the existing law shall be disposed of in accordance with the provisions of the existing law.

(ii) 142(3): Where any amount of credit of duty, tax or interest has been accumulated in the return for the last period under the existing law and such credit is not carried forward in the return under the existing law or in the transition return (GST TRAN-1/TRAN-2), and such amount is refunded in accordance with the provisions of the existing law, then such amount shall be refunded in cash under the CGST Act.

(iii) The provision also contains a non-obstante clause and saves application of certain provisions of the existing law, except typically the unjust enrichment bar (analogous to section 11B(2) of the Central Excise Act

4.4 Thus, the core issue that arises is the refund of credit that could not be transitioned. In the instant case, the fact position is that the appellant has Cenvat credit in balance which he could not transition in the GST TRAN 1/TRAN 2. The appellant then modified the ST 3 returns and filed the refund claim. The legal question that arises is whether section 142(3) create an independent right to cash refund of such credit, even if the "existing law" did not provide for cash refund of unutilized credit, and even if the credit was not carried forward. We note that the key interpretative points under section 142(3) that arise are "Credit of duty, tax or interest" under existing law which covers viz., CENVAT credit of central excise duty and service tax, and in some cases credit of additional customs duty. Such credit should be accumulated in the return for the last period under the existing law (e.g., June 2017 return for service tax/excise); and not carried forward either in the last return under existing law or in TRAN-1/TRAN-2. The core issue is whether such refund is "in accordance with the provisions of the existing law"

Section 142(3) says the amount shall be refunded in cash where such credit. Two competing views emerge: one is that Section 142(3) is only procedural, and the eligibility is to be construed strictly under old law, which is that such refund is allowed only if the existing law (Central Excise Act / Finance Act, 1994 / CENVAT Credit Rules) itself permitted refund of that credit. Since unutilized CENVAT credit was generally not refundable in cash under the old law (except in specific export/lying-idle scenarios), it would be appropriate to take the view that no cash refund arises under 142(3) for general unutilized credit. Section 142(3) merely specifies the mode (cash under CGST) where the old law already allowed refund, and does not create a new substantive right. However, Tribunals in several of its decisions, as relied upon by the appellant has held that section 142(3) is a substantive transitional relief with overriding effect, holding that the said provision is transitional and meant to prevent legitimate credit from being lost merely because it could not be carried forward into GST.Further, the phrase "refunded in accordance with the provisions of the existing law" is read as referring to the procedure and conditions (like proof of credit, no unjust enrichment), not as restricting refund only to cases where the old law expressly allowed cash refund. Further, we note that as the old law stands repealed/superseded, 142(3) can be seen as creating a new statutory right to cash refund of such transitional credit, subject mainly to, the proof that credit legitimately accrued and the satisfaction of test of unjust enrichment. Hence, the prevailing judicial precedent is to permit such refunds, once its eligibility and correctness is verified. However, in the instant case, we note that the learned AR has emphasised that the Appellant had failed to produce primary documents like invoices in large number of cases including proof of payment despite multiple opportunities granted to the Appellant. In cases, wherever invoices were submitted, the same contained multiple discrepancies which were never responded to or clarified by the appellant to the satisfaction of the Adjudicating Authority. Further, we note that with effect from 01.04.2011, the definition of input service meant any service,-(i).used by a provider of taxable service for providing an output service; or (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto place of removal and includes services used in relation to modernization, renovation or repairs of a factory, ……………………….. and excludes, inter alia, services such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetics and plastic surgery, membership of club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or home travel concession, when such services are used primarily for personal use or consumption of any employee. In the instant case, we find that in cases of services which are excluded from the category of input services like rent-a-cab, outdoor catering services etc., the Appellant failed to provide satisfactory clarification despite grant of multiple opportunities to substantiate whether such services were used in furtherance of business/output service or otherwise. We note that while Cenvat credit is a substantive right, the burden of proof strictly lies on the claimant under Section 11B of the Central Excise Act and Rule 5 of the Cenvat Credit Rules (CCR), 2004. Non-production of complete primary invoices for input services in more than 40 cases, alongside failing to the utilize multiple opportunities to submit clarification of excluded input services, and such repeated failure reveals a lack of due diligence and failure to discharge the burden of proof on the part of Appellant. Further, we note that no evidence has been led by the appellant during these proceedings as well to contest the Department's findings on inadmissibility of Cenvat credit which would warrant this Bench to refer such documents for re-verification by the Adjudicating Authority. Consequently, we hold that once the basic requirement of eligibility of such credit is in question, then the refund under section 142(3) does not arise.

5. We now take up the other submissions of the Ld Counsel for consideration.

5.1 The Ld Counsel has contended that the delay of one day in filing revised returns under Rule 7B of Service Tax Rules, 1994, can be termed as procedural lapse which should not undermine the substantive right of the refund of the Appellant. In this context, we observed that the legal provisions with a specific time limit such as Rule 7B incorporated in the Statute to correct previous errors or bona-fide mistakes Returns to be filed under Rule 7 is to be read strictly as any delay in filing of Revised Returns, even of one day cannot be further diluted by referring it to as procedural lapse. Therefore, this Bench is not inclined to accept the contention of the Appellant in this regard. We draw support from the Allahabad High Court's judgment dated 14.05.2024 in **M/s S Kumars Constructions** versus **Commissioner of Central Excise in Writ Tax No 1368 of 2023** which held as follows:-

> "11.The jurisprudential foundation supporting the primacy of limitation under special statute over general statute is multifaceted. Firstly, it recognises the legislature's intent to create a cohesive and self-sufficient legal framework tailored to specific nuances of the relevant legal domain. **By providing detailed provisions governing limitation period, the legislature ensures certainty and predictability in legal proceedings,** thereby promoting efficiency and expeditious resolution of disputes. Moreover, the exclusion of general statutes like the limitation act from the purview of special statute serves to maintain the integrity and coherence of the legislative scheme, preventing potential conflicts, and inconsistencies in statutory interpretation."

[emphasis supplied]

Hence, the time limit specified under Rule 7 (B) is sacrosanct.

5.2 Consequently, we hold that the delay of one day in the filing of the revised return cannot be condoned as procedural delay.

6. On applicability of Rule 7C for payment of late fee, the Ld Counsel submissions are not legally tenable as Rule 7C itself clearly restricts the scope of returns related to Rule 7, and does not cover Revised Returns stipulated in Rule 7B.We note that the provisions related to Rule 7C of the Service Tax Rules, 1994, came into existence vide Notification No.19/2016 dated 01.03.2016 with effective date *as*

01.04.2016, and at that point in time the provisions related to *Rule 7B* also existed with Rule 7. However, the absence of the reference to Rule 7B in the said Notification clearly confirms that the intent of said provision was to make it applicable with respect to Rule 7 only and not Rule 7B.

7. As regards the contention of the Ld Counsel that the Board's circular dated 28.09.2017, which provided for 30.08.2017 as the deemed date of filing returns under Rule 7 of the Service Tax Rules, 1994, is also applicable for the purpose of filing the revised returns under Rule 7B, the same cannot be accepted. We find that the said circular is applicable in cases of invoices pertaining to Reverse Charge Mechanism[19]. We note that the impugned order has observed that the records made available by the applicant indicated that the majority of the invoice numbers referred, did not pertain to RCM. We also note that it has been held that the remaining details of RCM related invoices provided by the appellant forms a part of the excluded input services under rule 2(l) of the Cenvat Credit Rules, 2004. The impugned order has also observed that the appellant failed to provide clarification with respect to the eligibility of such RCM related services for credit, despite several opportunities granted to them by the adjudicating authority. The appellant has not submitted any contrary information before us during the proceedings. Hence, we are unable to accept this contention of the learned counsel.

8. Ld Counsel has relied on several case laws in support of their contention that substantial right of Refund cannot be denied merely

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due to procedural lapse. We have perused the said case laws and find that in most of these cases, the admissibility of Cenvat credit was never a question, whereas in the instant case it is not only non-compliance of provisions of Section 142(9)(b) of CGST Act, 2017, but also non-fulfilment of conditions enumerated in Rule 9 of Cenvat Credit Rules,2024, with respect of non-submission of supporting documents to claim admissibility of Cenvat credit. Some of the relied upon decisions are being distinguished hereinafter:-

(a). M/s GE Power Systems India Pvt. Ltd. Versus Commissioner of Service Tax, Ahmedabad **(2024) 25 Centax 355 (Tri.-Ahmd)**:- The Tribunal observed that mere procedural lapse in carrying forward credit cannot extinguish substantive right. In the case of M/s GE Power Systems India Pvt. Ltd, the Revised Returns was filed as per specified time limit prescribed in Section 142(9)(b) of the CGST Act but refund claim was rejected on the ground that the M/s GE Power Pvt. Ltd., instead of carrying forward the Cenvat credit in GST TRAN-I, has intentionally filed refund application in order to encash the balance of Cenvat credit. Thus, there was no dispute regarding eligibility to file refund claim under Section 142 (9)(b) whereas *in the instant case* the eligibility to claim refund in terms of Section 142(9)(b) itself was in dispute as the Revised Return was not filed as per time limit prescribed in the existing law. Therefore, the said case law is not applicable in the instant case.

(b). M/s Bharat Heavy Electricals Ltd. v. Commissioner of C.T., Secunderabad-ST **[2020 (41) G.S.T.L. 465 (Tri.-Hyd.)]**:- This case pertains to refund of unutilised Cenvat credit balance in Credit ledger arising out of original ST-3 Returns (Rule 7) for period ending June, 2017whereas in the instant case the refund claim has been made by Appellant on the basis of Revised Returns (under Rule 7B) which was not filed within the specified time limit prescribed in Section 142(9)(b) of the CGST Act, 2017. Thus, the facts & circumstances are not same in cited case. In fact, the Hon'ble Tribunal has rejected the Appeal filed by M/s Bharat Heavy Electricals Limited and observed that cash refund of unutilized credit not permissible.Therefore, the said case law is not applicable in the instant case.

(c). M/s Eicher Motors Ltd. and Another v. Union of India and Others, **(1999) 2 SCC 361 = 1999 (106) E.L.T. 3 (S.C.)**. The facts and circumstances of the cited case and case in hand do not at all match. The issue involved in the issue in hand related to non-fulfill of conditions prescribed in statues (Section 142(9)(b) of the CGST Act as also non-admissibility of Cenvat credit which is not the case in cited case law. Therefore, reliance placed by the Appellant in citing this case is futile exercise.

(d). M/s NU Vista Ltd. Versus Commissioner (Appeals), CGST, C. Ex., Raipur, **2022 (381) E.L.T. 681 (Tri.-Del.)**. The facts & circumstances in the case law cited and case in hand are different. In the case in hand, the admissibility of Cenvat credit itself is in question. Also, the eligibility of Refund claim is in question as the Revised Return was not filed within specified time limit as prescribed in statute viz., Section 142(9)(b) of the CGST Act, 2017.

(e). M/s Slovak India Trading Co. Pvt. Ltd., **2008 (10) STR 101 – 2006-VIL-53-KAR-CE [maintained in Supreme Court at 2008 (223) E.L.T. A170 (S.C.) – 2007-VIL-43-SC-CE]**. This case pertains to refund of unutilised Cenvat credit balance in Credit ledger on account of closure of factory whereas in the case in hand the refund claim has been made by Appellant on the basis of Revised Returns (under Rule 7B) which too was not filed within specified time limit prescribed in Section 142(9)(b) of the CGST Act, 2017.In the case in hand, the Appellant had already carried forward originally declared (ST-3 Return) Cenvat credit through TRAN-I to GST Regime which confirm that the Appellant carried on its activities even in GST Regime and was not closed. Moreover, in the case in hand, the admissibility of Cenvat credit is in question which have remained unsubstantiated for long by the Appellant despite several opportunities granted to them.

(f). M/s Rama Industries Ltd. Vs Commissioner of Central Excise, Chandigarh, **2009-VIL-152-P&H-CE**. This case pertains to cash refund of undisputed & unutilised Cenvat credit balance in Credit ledger whereas in the case in hand the refund claim has been made by Appellant on the basis of Revised Returns (under Rule 7B) which too was not filed within specified time limit prescribed in Section 142(9)(b) of the CGST Act, 2017.Also, in the case in hand, the admissibility of Cenvat credit itself is in question which have remained unsubstantiated for long by the Appellant despite opportunities granted to them.

(g). M/s. Diaspark Infotech Pvt. Ltd. Versus CGST, CE & CC, Indore, **2019 (2) TMI 948 – CESTAT New Delhi**. This case pertains to refund of undisputed & unutilised Cenvat credit even if balance in ST-3 Return is shown as "NIL" whereas in the case in hand the refund claim has been made by Appellant on the basis of Revised Returns (under Rule 7B) which too was not filed within specified time limit prescribed in Section 142(9)(b) of the CGST Act, 2017.Also, in the case in hand, the admissibility of Cenvat credit itself is in question which have remained unsubstantiated for long by the Appellant despite opportunities granted to them. Therefore, the reliance placed by the Appellant is not tenable.

(h). M/s Punjab National Bank Versus Commissioner of C.T., Bangalore North, **2021 (52) G.S.T.L. 421 (Tri.-Bang.).** The Tribunal observed that Commissioner (Appeals) was not justified in invoking a new ground to reject refund claim whereas in the case in hand the Commissioner (Appeals) did not raise any new ground except that was already communicated to the Appellant in the SCN as well as OIO. Also, the Tribunal set aside the order of Commissioner (Appeals) who had rejected the refund claim on account of time-bar as per Section 11B of the Central Excise Act, 1944 while directing the Competent Authority to consider the refund application as per Section 142(9)(b) the CGST Act. In the case in hand, the issue of time-bar pertaining to Section 11B of the Central Excise Act, 1944 is absent. The revised return was not filed as per time limit prescribed in Section 142(9)(b) whereas in the case law cited the revised return was filed (04.09.2017) within stipulated time of 45 days.

(i). M/s Punjab National Bank Versus Commissioner, Central Goods and Service Tax, Central Excise, Jaipur, Rajasthan, **2022 (67) G.S.T.L. 467 (Tri.-Del.).** In the case cited by the Appellant, the Revised Return was filed well within time limited prescribed under Section 142(9)(b) of the CGST Act and there was no dispute with respect to admissibility of Cenvat credit pertaining to missing invoices which formed part of Revised Returned. In the case in hand, timely submission of Revised Return & Admissibility of Cenvat credit is not fulfilled to the satisfaction of Competent Adjudicating Authority. Therefore, facts & circumstances of the case cited and case in hand in are different. Hence, reliance placed on cited case law by the Appellant is not tenable.

(j). M/s Lupin Limited Versus Commissioner of GST & Central Tax, Aurangabad Commissionerate, Nashik, Final Order No. A/85393/2024 dated 09.09.2024, CESTAT Mumbai. In the case law cited, the genuineness/admissibility of the Cenvat credit was not in question except that the Department cited absence of legal provision for cash refund in relevant statute. Whereas, in the case in hand, admissibility of Cenvat credit under Section 142(9)(b) of the CGST Act, 2017 itself is in question which has remained unanswered by the Appellant to the satisfaction of Competent Authority.

9. We also observe that the Appellant failed to produce primary documents such as invoices in large number of cases including proof of payment despite multiple opportunities granted to the Appellant, and wherever invoices were submitted it contained multiple discrepancies which were never responded to the satisfaction of the Adjudicating Authority.

10. Further, we note that with effect from 01.04.2011, the definition of input service was amended to include any service uses,-(i).used by a provider of taxable service for providing an output service; or (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto place of removal and it includes services used in relation to modernization, renovation or repairs of a factory, ---

and excludes, inter alia, services such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetics and plastic surgery, membership of club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or home travel concession, when such services are used primarily for personal use or consumption of any employee. We find that in the instant case, the appellant in relation to services such as rent-a-cab, outdoor catering services failed to substantiate the credit availed, despite multiple opportunities granted.

11. As regards the allegation of the Appellant that the Department cannot altogether initiate new proceedings on the basis of new allegations, we note that the Original Adjudicating Authority while deciding the refund application vide order dated 23.06.2020 had made specific observation with respect to non-examination of other aspects of admissibility of refund application as the Appellant had not provided the records relating to admissibility of Cenvat credit itself. Further, on remand, the Adjudicating Authority, while examining the violations under Section 142(9)(b) held that the same was sufficient to reject refund claim, and refrained from discussions regarding admissibility of the said claim. We hold that the issues raised in two Orders-in-original dated 23.06.2020 & 09.11.2021) are essential requirement under Section 142(9)(b) of the CGST Act,2017. Hence, we hold that there is no merit in the submissions of the learned counsel.

12. In view of the above discussions, we uphold the impugned order and dismiss the appeal.

(Order pronounced in the open Court on 21.07.2026)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.