GOODS AND SERVICES TAX APPELLATE TRIBUNAL,

THANE BENCH <u>Division Bench Court No. Court I</u>

APL/8/THN/2026

TATA UNISTORE LIMITED ....**Appellant**

Versus

COMMISSIONER CGST & EX. NAVI MUMBAI COMMISSIONERATE, 16TH FLOOR, SATRA PLAZA, PALM BEACH ROAD, SECTOR 19D, VASHI, NAVI MUMBAI, COMMISSIONER CGST & EX. NAVI MUMBAI COMMISSIONERATE & ORS. ....**Respondent**

Counsel for Appellant
SHRI PRASAD PARANJAPE, ADVOCATE

Counsel for Respondent
SHRI G.N.JHA, ASSISTANT COMMISSIONER, AUTHORISED REPRESENTATIVE

<u>Hon'ble Shri Ramesh Nair, Member(Judicial)</u>
<u>Hon'ble Shri Prallhad S. Paranjape, Member (Technical)</u>

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : ZN330230726000012H **Date of order :** 31/07/2026

1.	GSTIN/Temporary ID/UIN - 27AACCT7290E1Z7	
2.	Appeal Case Reference no. - APL/8/THN/2026	Date - 29/01/2026

3.	Name of the appellant - TATA UNISTORE LIMITED , ajamdar@tataunistore.com , 8355812736
4.	Name of the respondant - 1. Shri. Deepak Mata, Deputy Commissioner (Legal), PCCO, Mumbai Zone , deepak.mata@gov.in , 9819433662 2. Commissioner CGST & Ex. Navi Mumbai Commissionerate
5.	Order appealed against - AD270823027759K
	(5.1) Order Type - Demand Order
	(5.2) Ref Number - ZD270924057773V — Date - 24/09/2024
6.	Personal Hearing - 31/07/2026 18/06/2026 10/06/2026 07/05/2026 30/04/2026
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled
8.	Order in brief - The impugned order is set aside. Appeal is allowed with consequential relief.
	Summary of Order
9.	If demand order then whether demand quantified: No

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Short or non-payment of tax	The Appellate Authority Authority confirmed the wrongful availment of transitional credit of Rs. 32,80,75,063 for the period July 2017 to March 2018, and its recovery along with applicable interest and penalty on the ground that the Appellant has not satisfied the conditions for availing transitional credit.	The impugned order is set aside. Appeal is allowed with consequential relief.

Place :THANE

Signature

Date : 31.07.2026

THANE Shri Ramesh Nair

Designation : Member

Jurisdiction :Thane

ORDER

GOODS AND SERVICES TAX APPELLATE TRIBUNAL,

THANE BENCH

Suraj House, 1st Floor, Ghodbunder Road, Dongripada, Thane West, Thane (Maharashtra) 400615

APPEAL NO. APL/8/2026

Tata Unistore Limited ... Appellant

versus

Commissioner, CGST & C. Ex.,

Navi Mumbai, Commissionerate ... Respondent

Order per: Shri Ramesh Nair, Judicial Member

The present appeal is directed against the Order-in-Appeal No. CSM/203/RGD APP/2024-25 dated 31.05.2024 passed by the Commissioner, CGST & CEX, Appeals Raigad for the period July 2017 to March 2018.

1. Question of Law involved

1.1 Whether the 1st Appellate Authority is right in confirming the demand of alleged inadmissible Input Tax Credit ("**ITC**") transitioned from the pre-GST regime into the GST regime under the provisions of Section 140 of the Central Goods and Services Tax Act, 2017 ("**CGST Act**") read with Central Goods and Services Tax Rules, 2017 ("**CGST Rules**"), when such credit was never disputed under the pre-GST regime?

2. Brief facts of the case

2.1 The Appellant is, *inter alia*, engaged in the business of managing and operating an e-commerce platform, viz. TataCliQ.com, which functions through both a mobile application and a website (online platform). The Appellant was duly registered under the service tax regime and was availing CENVAT credit of eligible input services and also ITC of VAT paid on goods were sold on its online platform.

2.2 With the introduction of Goods and Services Tax ("**GST**") in India with effect from 01.07.2017, the Appellant became entitled to transition the ITC balance reflected in its service tax and VAT returns into the GST regime by filing Form GST TRAN-1, in accordance with Section 140 of the CGST Act read with Rule 117 of the CGST Rules.

2.3 Under the taxation regime prior to introduction of GST i.e. the erstwhile regime, the Appellant had filed its service tax return for the period April 2017 to June 2017 under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994. For the period April 2017 to June 2017, vide Notification No. 18/2017-Service Tax dated 22.06.2017, the Appellant was permitted to file its return by 15.08.2017, and such return could legitimately be revised within 45 days from the date of filing of the original return. The Appellant had filed its original ST-3 return on 14.08.2017 and thereafter filed a revised return on 26.09.2017.

2.4 In the said Service tax return, the Appellant had disclosed an amount of Rs. 31,83,93,390 as basic service tax and Rs. 74,67,109 towards Krishi Kalyan Cess (“**KKC**”) as CENVAT credit. An amount of Rs. 22,14,479, representing ITC of VAT paid on Stock-in-Trade, was transitioned into the GST regime under Section 140(6) of the CGST Act.

2.5 For the purpose of transitioning the aforesaid CENVAT credit and VAT ITC balance into the GST regime, the Appellant filed Form GST TRAN-1 under Section 140 of the CGST Act and transitioned the said amount under the following categories:

Sr. No.	**Credit Transitioned**	**Basic tax** Rs.	**KKC** Rs.
1	Input Services - Under Section 140(1) - as per Tran-1 – (Pg 55 of Appeal)	29,93,34,297	67,86,516

Sr. No.	Credit Transitioned	Basic tax Rs.	KKC Rs.
2	Input Services - Under Section 140(5) - as per Tran-1 – (Pg 59-63 of Appeal)	1,90,59,093	6,80,681
3	Total (Amount as per Service tax Return - 31,83,93,382)	31,83,93,390	74,67,109
4	Stock-in-Trade – Under Section 140(6) - VAT credit - as per Tran-1 (Pg No. 57-58 of Appeal)	22,14,479	-
5	Total	32,06,07,869	74,67,109
6	**Grand Total** (as per SCN Rs.32,80,75,063 – excess by Rs.85)	**32,80,74,978**	

2.6 Thus, a total ITC of Rs. 32,80,74,878 (SCN alleges Rs.32,80,75,063) was transitioned from the erstwhile regime into the GST regime by filing Form GST TRAN-1. Out of the above amount, the Appellant had reversed under protest Rs.74,67,109 towards credit of transitioned KKC in the return of December 2017 due to doubts of its eligibility during the relevant time.

2.7 The aforesaid credit so transitioned came to be disputed by way of a Show Cause Notice dated 18.01.2022, alleging that the Appellant had not produced relevant evidence to substantiate the eligibility of such credit under the GST law.

2.8 Briefly, the submissions made by the Appellant before the Original Authority as well as the 1st Appellate Authority were that, since the said credit was never disputed under the pre-GST regime and was duly reflected in the service tax returns filed by the Appellant which have not been challenged by the Revenue to date, the same cannot be questioned under the GST regime.

2.9 The aforesaid submissions were not accepted by the Original Authority as well as the 1st Appellate Authority, resulting in confirmation of the demand along with applicable interest and imposition of 100% penalty. Therefore, the present appeal.

3. Grounds of Appeal

3.1 The Appellant has filed the present appeal challenging the order of the 1st Appellate Authority on the following grounds.

a) Respondents have travelled beyond the jurisdictional powers assigned under the CGST Act inasmuch as the proceedings are initiated under Section 74(1) of the CGST Act and not under the erstwhile law, as provided under Section 142(6)(a) of the CGST Act.
b) There is no contravention of Section 140 of the CGST Act.
c) Respondent has erred in holding that the Service tax revised return was filed beyond statutory limit.

d) Procedural lapses should not come in way to grant substantial benefit of ITC to the Appellant.

e) Verification of invoices not envisaged in law nor is it feasible to corelate closing balance with specific invoices.

f) Credit of KKC cannot be denied in view of the judgement of the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg Co Ltd vs UOI & Ors – 2021 (11) TMI 157.

g) Invocation of Section 74 of the CGST Act and consequent imposition of penalty not sustainable.

3.2 Shri Prasad Paranjape, learned Advocate appeared on behalf of the appellant and reiterated the grounds of appeal. He also argued on the basis of the written submission and compilation of judgments and relevant statutory provisions filed online.

4. Submission of Respondent

4.1 Shri G. N. Jha, Learned Assistant Commissioner, Authorised Representative appearing on behalf of the Respondent during the hearing reiterated the findings in the impugned order and had sought time to file written submissions within 15 days, however the same was belatedly submitted online on 15.07.2026. Despite delay in submission, we considered the said submissions in the interest of justice. The submissions made on behalf of the Respondents is briefly as under:

a) The Assessee had failed to substantiate eligibility of the transitioned credit despite repeated opportunities and had furnished only 174 sample invoices involving credit of Rs. 8,61,84,494, being approximately 29% of the total credit of Rs. 32,80,75,063 transitioned through TRAN-1. Thus, the onus under Sections 59 and 155 of the CGST Act had not been discharged.

b) In respect of admissibility of transitional credit, only CENVAT credit of "eligible duties" could be transitioned under Section 140(1) of the CGST Act, and credit of Krishi Kalyan Cess / Cesses was not an eligible duty and could not have been transitioned into the GST regime. Reliance was placed on Explanation 1 and Explanation 3 to Section 140 of the CGST Act, Notification No. 02/2019-GST dated 29.01.2019 and Circular No. 87/06/2019-GST dated 02.01.2019.

c) In respect of credits claimed under Sections 140(5) and 140(6) of the CGST Act, the Appellant did not furnish documentary evidence to verify credits of Rs. 1,97,39,771 and Rs. 22,14,479 respectively, and therefore the same was rightly denied.

d) The credit of Rs. 8,61,84,494 was wrongly availed, since the Appellant did not establish receipt of goods / services or accounting thereof in its books, and the case law relied upon by the Appellant on procedural lapse were distinguishable.

e) Credit on tax paid under reverse charge of Rs. 3.17 crores was unsupported by requisite documents such as statement, invoice details, challans, payment details and date of availment.

f) In respect of the two Google India Pvt. Ltd. invoices, the credit of Rs. 15,69,217 was rightly denied, since one invoice involving Service Tax of Rs. 7,25,996 was not furnished and there was mismatch in invoice dates, and no payment voucher / proof of payment was submitted.

g) The proceedings had been validly initiated under Section 74(1) of the CGST Act, since the disputed CENVAT credit had been transitioned through Form GST TRAN-1 and the issue was related to contravention of Section 140 of the CGST Act read with Rule 117 of the CGST Rules. Further, Section 142(6)(a) was inapplicable, and the matter was covered by Section 142(9)(a), Section 174, Rule 121 and Section 160 of the CGST Act / Rules.

h) The Appellant failed to furnish documents despite reminders and opportunities, did not comply with its commitment to submit documents by 10.11.2021, and thereby suppressed material facts with intent to transition and utilise inadmissible credit. Thus, invocation of Section 74(1), along with interest under Section 50(3) and penalty under Section 122(2)(b) of the CGST Act is justified.

i) The decisions in Usha Martin Ltd. and Steel Authority of India Ltd. vs. State of Jharkhand and Kunjal Synergies Pvt. Ltd. & Anr. vs. Assistant Commissioner of CGST & CX, Park Street Division were distinguishable on facts and did not apply to the present proceedings.

5. Discussion and Finding

5.1 We have heard both the parties, perused the records and considered oral and written submissions made before us during the hearing.

Jurisdiction of the CGST Authorities to invoke proceedings

5.2 We find that the present proceedings are initiated under Section 74(1) of the CGST Act for the period July 2017 to March 2018 and has denied the benefit of transition of CENVAT credit to the GST regime on the ground that availment of the said credit was inadmissible under the erstwhile laws.

5.3 From the records, it is apparent that the credit that is transitioned by the Appellant and is subject matter of dispute was appearing as closing balance of credit in respective returns filed by the Appellant under the erstwhile laws viz. Finance Act, 1994 and the Maharashtra VAT Act.

5.4 The learned Authorized Representative for the Respondents has also admitted that no proceedings have been initiated or pending against the Appellant under the erstwhile laws with respect to admissibility of such credit now sought to be transitioned when it was availed.

5.5 At this juncture we refer to Section 142 (6)(a) and Section 174(2)(e) of the CGST Act which are reproduced as under:

Quote

Section 142 (6)(a)

"(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;

Section 174

(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (1 of 1944) (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955), the Additional Duties of Excise (Goods of Special

Importance) Act, 1957 (58 of 1957), the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), and the Central Excise Tariff Act, 1985 (5 of 1986) (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994) (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not-

- *a.* ...
- *b.* ...
- *c.* ...
- *d.* ...
- *e. affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed"*

Unquote

5.6 From the above cited provisions it is clear that recovery proceedings related to inadmissible credit under erstwhile laws can be initiated only under the provisions of the erstwhile laws, even after enactment of the CGST Act.

5.7 Further, the above provisions do not empower the Respondents to initiate proceedings pertaining to the erstwhile period under the provisions of the CGST Act. As per Section 142 of the CGST Act read with Section 174 thereof, the relevant authority should have initiated proceedings for adjudicating correctness of credits availed by the Appellant, only if any there is a case of wrong availment of CENVAT credit in terms of Rule 14 of erstwhile Cenvat Credit Rules, 2004

5.8 Our above finding is supported by the judgement of the Hon'ble Jharkhand High Court in the case of Usha Martin Limited vs Additional Commissioner of CGST & CEx – (2022) 1 Centax 46 (Jhar) which has held as under:

18. *The enumerated conditions under which the registered person shall not be entitled to avail of the credit of input tax are not one which are applicable to the case of the present petitioner. The show cause notice under which the instant adjudication proceedings were initiated is worded allege similar contraventions under the CEA, Finance Act, 1994 and the CCR as the previous show cause notices issued under the existing law against the petitioner relating to contravention of the C.E.A., Finance Act and C.C.R.. The adjudicating authority does not hold that the transition of CENVAT Credit under section 140 of the C.G.S.T. Act by the petitioner and relating to* *the period just before the appointed date i.e. 1st July, 2017 are not one which are inadmissible to be credited in terms of section 16 (2) of the C.G.S.T. Act. The Show cause notice itself alleges contravention of the C.E.A., Finance Act, 1994, read with C.C.R., 2004. As such, sub clause (i) of proviso to section 140 does not apply to the case of the petitioner at hand. It is neither the allegation against the petitioner that he had not furnished his returns required under the existing law for the period of six months immediately preceding the appointed date as per clause (ii) to the proviso to Section 140. In substance, the contraventions which have been alleged and the proceedings which have been initiated under section 73 (1) of the C.G.S.T. Act are in relation to violation of the C.E.A. and Finance Act read with C.C.R. The gist of the imputation is that the petitioner could not claim the CENVAT credit in lieu of invoices raised by its Bokna mines as both of them were independent entities. Similar was the imputation in respect of the previous show cause notices issued under the existing law which are pending adjudication before the learned CESTAT or the Commissioner (Appeals) for different periods and in some of which the petitioner has already got a stay by the learned CESTAT. Whether the CENVAT credit under the existing law were admissible to be availed and transitioned by the petitioner was not an issue lying within the jurisdiction of the C.G.S.T authorities to be proceeded against and determined under the relevant provisions of Section 73 of the C.G.S.T. Act which provides as under:*

"Under Section 73 of the C.G.S.T. Act a proper Officer may require a registered person to show cause in case it is found that he has not paid any tax or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any wilful misstatement or suppression of fact to evade tax (such contraventions are covered by Section 74 of the C.G.S.T. Act) asking him to explain as to why he should not pay the amount specified in the notice along with interest and under section 50 and penalty thereupon".

A perusal of the provisions of Section 73 of the CGST Act makes it clear that such a proceeding can be initiated for non-payment of any tax or short payment of such tax or for erroneous refund of such tax or for wrongly availing or utilizing the input tax credit which are available under the C.G.S.T. Act. Section 73 does not speak of CENVAT Credit as C.G.S.T. Act does not provide for CENVAT Credit rather the term has been subsumed in the expression input tax credit both relating to the supply of good or services. The assumption of jurisdiction by Respondent No. 1 to determine whether the CENVAT Credit was admissible under the existing law by invoking provisions of Section 73 of the C.G.S.T. Act was therefore not proper in the eye of law.

....

....

22. *Therefore, it is clear that the repeal of the existing laws upon coming of the G.S.T. law regime did not leave a vacuum as to past transactions which were not closed. The repeal and saving clause (e) under section 174(1) of the C.G.S.T. Act allowed such legal proceedings to be instituted in respect of inchoate rights except rights under transactions which were past and closed. Petitioners also admit that proceedings for availing CENVAT Credit which were allegedly inadmissible under the C.E.A., Finance Act, read with C.C.R., 2004 could have been initiated under the existing laws. It is also not in dispute that in respect of previous proceedings for such contravention the cases have been kept in call book and in some of them the learned CESTAT has stayed the recovery of the tax. The duty of the constitutional courts is to interpret the law and also to ensure that there is certainty about the law not only in the minds of the law enforcement agencies but also in the common person as to where he stands in the eye of law. If proceedings for transition of CENVAT Credit alleged to be inadmissible is permitted to be carried under the C.G.S.T. Act, it may lead to uncertainty not only in the minds of the ordinary citizen but also in the minds of the Tax authorities. In some cases a jurisdictional proper officer under the C.G.S.T. Act may initiate proceedings under the provisions of the C.G.S.T Act for such contravention. In other cases the competent jurisdictional officer may initiate proceedings under the existing law that is the C.E.A. and Finance Act for the same* *contravention in view of the repeal and saving provisions under section 174 of the C.G.S.T. Act. Such a course cannot be countenanced in law. As such, we are of the considered view that the initiation of proceedings by respondent no. 1 under section 73 (1) of the C.G.S.T. Act, 2017 for alleged contravention of the C.E.A. and Finance Act, read with C.C.R. against the petitioner by filing TRAN 1 in terms of Section 140 of the C.G.S.T. Act for transition of CENVET Credit as being inadmissible under the existing law was beyond his jurisdiction. Consequently the Order in Original dated 30th March, 2022 passed by the respondent no. 1 being without jurisdiction cannot be sustained in the eye of law. The impugned adjudication proceedings and the order in original dated 30th March, 2022 are accordingly quashed.*

5.9 Our attention is also drawn to the judgement of the Hon'ble High Court of Jharkhand in Steel Authority of India Limited vs State of Jharkhand – (2025) 28 Centax 60 (Jhar.) which has taken a similar view following the ratio in the judgement of ***Usha Martin supra*** by holding as under:

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

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

.....

.....

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

5.10 Further, Hon’ble Calcutta High Court in the case of Kunjal Synergies Pvt Ltd vs Assistant Commissioner of CGST & CEX – (2025) 28 Centax 198 (Cal.) held thus:

15. *Thus, while answering the question, it has to be considered whether the initiation of proceedings by the respondent no.1 therein under Section 73 of the CGST Act for alleged contravention of the Central Excise Act and Finance Act read with CENVAT Credit Rules against the petitioners therein by filing TRAN 1 in terms of Section 140 of the CGST Act for transition of CENVAT credit as being inadmissible under the existing law or beyond his jurisdiction. Accordingly, the adjudication proceeding, which was impugned in the said writ petition, was quashed. However, the respondent authorities were granted liberty to initiate proceedings under the provisions of the existing law i.e. Central Excise Act, 1944, Finance Act, 1944 read with CENVAT Credit Rules, 2004 against the petitioner therein for the relevant tax period in accordance with law.*

16. *The expression "in accordance with law" is added with the purpose because the liberty should not be construed to be a liberty de hors the provisions of law.*

17. *The learned advocate appearing for the appellants submitted that information was sought for under the provisions of the*

Right to Information Act, 2005 as to whether any appeal has been filed against the judgment passed in the case of Usha Martin Limited (supra) and a reply was received on 6th February, 2024 stating that the department has not filed any appeal against the said judgment. However, we note that the Hon'ble Division Bench of the High Court of Jharkhand in the case of Steel Authority of India Ltd. v. State of Jharkhand (2025) 28 Centax 60 (Jhar.) /[TS-49-HC (JHAR)-2025-GST] had occasion to consider more or less an identical fact as the case on hand and followed the decision in Usha Martin Limited (supra) and quashed the adjudication order, which was impugned therein and also issued consequential directions. However, the liberty for the authority was preserved as per the observations made in Usha Martin Limited (supra).

18. In the light of the above discussions, we have no hesitation to hold that the impugned show-cause notice is without jurisdiction. In the result, the appeal is allowed along with the connected application (IA No. CAN 1 of 2023). The order passed by the learned Single Bench is set aside. Consequently, the writ petition is allowed and the impugned show-cause notice is quashed.

5.11 Respectfully, following the ratio of the above judgements of the Hon'ble High Courts, we hold that the proceedings initiated by the Respondents are beyond the jurisdictional powers vested in them under the CGST Act.

5.12 Our specific observations with respect to the specific findings in the impugned order are as under:

Transitioned ITC of Rs. 31,83,93,390 (Rs. 29,93,34,297 under Section 140(1) and Rs. 1,90,59,093 under Section 140(5))

5.13 We find that the amount of credit disclosed in the service tax return filed for the period April 2017 to June 2017, and subsequently transitioned into the GST regime, was never disputed or challenged on the ground of eligibility under the erstwhile law.

5.14 The assessee, under Section 140(1) of the CGST Act, is entitled to carry forward the amount of CENVAT credit of eligible duties, as reflected in the return relating to the period ending immediately preceding 01.07.2017, furnished under the erstwhile law, into its electronic credit ledger maintained under the GST regime. Such transition is, however, subject to the following conditions, namely that such credit shall not be allowed:

(i) where the said amount of credit is not admissible as ITC under the GST law; or

(ii) where the person has not furnished all returns required under the erstwhile law for the period of six months immediately preceding the appointed date, i.e., 01.07.2017; or

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as may be notified by the Government.

5.15 We find that compliance to conditions (ii) and (iii) above are not in dispute. Insofar as condition (i) is concerned, the lower authorities have sought to examine the correctness and eligibility of the credit availed under the erstwhile law under the guise of the powers conferred upon them under Section 140(1) of the CGST Act.

5.16 We find force in the submission of the Appellant that such an exercise of power is without authority of law and contrary to the ratio of judgements relied upon by them during the hearing before this Tribunal and referred by us *supra*.

5.17 Revenue in its submissions has merely argued that these judgements are distinguishable on facts without actually bringing out such distinguishing features.

5.18 In our opinion, the lower authorities were not expected to undertake an examination of the correctness of the ITC availed under the erstwhile law where the same has undisputedly remained unchallenged under the erstwhile regime, which is the position in the present case.

5.19 The lower authorities have sought to examine and call for records such as copies of invoices, CENVAT credit registers, payment details, and the correctness of such invoices, in order to determine whether the credit transitioned is eligible to the Appellant under the erstwhile law. Such an exercise is not permissible in law unless the same had been subject to challenge under the erstwhile regime and that too by the authorities constituted under the erstwhile regime.

5.20 Reliance of the Revenue on Section 174 of the CGST Act is also of no avail inasmuch as it only authorizes continuation of the proceedings initiated under the erstwhile law. However, it doesn't authorize the officers appointed under the CGST Act to examine correctness of ITC availed by the Appellant under the erstwhile regime.

5.21 Even otherwise, since what is permitted to be transitioned is the closing balance, such a balance being a derivative of opening balance, credit availed and credit utilized, cannot be attributed to any specific invoice or document. Thus, the exercise of justifying the ITC closing balance with invoice copies was an exercise in futility.

5.22 We observe that the lower authorities have misunderstood clause (i) of the proviso to Section 140(1) of the CGST Act which states that transition is not permitted when the said amount of credit is not admissible as ITC under the GST Act. This clause has to be read in the context of the parent provision which states that the Appellant shall be entitled to take into electronic credit ledger, the amount of CENVAT credit carried forward in the service tax return. Then this amount is qualified to be not eligible when the said amount of credit is not admissible as input tax credit under the CGST Act.

5.23 Reading the above two provisions harmoniously, what it means is when the CGST Act does not permit credit of input tax in certain situations or on certain goods and services the same cannot be transitioned into the GST regime. There are instances under Section 142 of the CGST Act where it is expressly provided that in certain situations the tax or credit arrears determined of the erstwhile regime will not be permitted as ITC under the GST regime. It does not by any stretch of imagination permit the GST officers to carry out assessments of credits claimed under the erstwhile regime.

Transition of Krishi Kalyan Cess (KKC)

5.24 With respect to KKC, the Appellant had transitioned the same into the GST regime by filing Form GST TRAN-1. However, due to lack of clarity regarding the availability of ITC in respect of KKC, the Appellant, out of abundant caution, reversed the amount of Rs. 74,67,109 under protest and duly reflected the same in the return for the month of December 2017.

5.25 We find that in light of the judgment of the jurisdictional Hon'ble Bombay High Court in the case of ***Godrej & Boyce supra***, confirmation of demand of transitioned KKC is not sustainable. We reproduce the relevant findings of the Hon'ble Bombay High Court as under:

11. Importantly, Mr. Jetly has not produced any document or material to show that the amendments in Explanations 1 and 2 to Section 140 brought about by Section 28 of the Amending Act have been brought into force. Pertinently, amendment in sub-section (1) of Section 140 has been brought into force by the said notification and the expression 'of eligible duties' now finds place therein. However, Explanation 3 seeks to clarify that the expression 'eligible duties and taxes', as distinguished from 'eligible duties', excludes any cess not specified in Explanations 1 and 2 and any cess collected as additional duty of customs. The expression 'eligible duties and taxes' appears in sub-section (5) of Section 140, whereas the expression used in sub-section (1) thereof is 'of eligible duties'. Mr. Hidayatullah seems to be right in his contention that mere introduction of Explanation 3 to Section 140 of the CGST Act, and making it operational with effect from February 1, 2019, would not clothe the respondent no. 3 with the power to issue a show-cause notice on the premise that Education Cess, Higher Secondary Education Cess and Personal Account Amounts are not included in Explanations 1 and 2. For sustaining the validity and/or *legality of the impugned show-cause notice, the respondent no. 3 could not have relied upon Explanation 3 exclusively to contend that cess is not included in 'eligible duties and taxes'. As the law now stands, Explanation 3 does not have any application to sub-section (1) of Section 140. The respondent no. 3 while issuing the impugned show-cause notice perhaps overlooked this aspect and also that, parts of the amendments in Explanations 1 and 2 to Section 140 of the CGST Act sought to be introduced by sub-clause (1) each of clauses (b) and (c) of Section 28 of the Amending Act are yet to be brought into force. In such view of the matter, a reference to Explanations 1 and 2, as it stands now, may be held to be mindless which, in law, would amount to issuance of a notice without due regard to the provisions of law as well as facts requiring existence or non-existence of a material fact for assumption of jurisdiction.*

12. We are conscious of the settled law that the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India ought not to interfere with a show-cause notice as a matter of routine or for the mere asking. However, it is only in a case where a show-cause notice is found to be totally non est in the eyes of law for absolute want of jurisdiction of the authority issuing the notice to even investigate into the facts that the writ court may, instead of relegating the noticee to respond to the show-cause notice, itself examine the point of lack/want of jurisdiction. If any authority is required, one may profitably refer to the decision of the Supreme Court in Special

Director and Anr. v. Mohd. Ghulam Ghouse 2004 (164) E.L.T 141/[2004] 3 SCC 440.

13. Although it is true, as contended by Mr. Jetly, that the respondent no. 3 does not lack the jurisdiction to issue a notice of the nature impugned herein provided the circumstances therefor do exist, the question that has arisen for our consideration is whether issuance of the show-cause notice is vitiated for an approach which is based on an erroneous legal premise. An error in assumption of jurisdiction might also render a notice/an order ultra vires and bad. Perusal of the impugned show-cause notice would reveal assumption of jurisdiction by the respondent no. 3 based on introduction of Explanation 3 to Section 140 of the CGST Act read with Explanations 1 and 2 thereof without showing application of mind as to whether the amended Explanations 1 and 2 have been made operational or not as well as whether Explanation 3 would at all apply to sub-section (1) of Section 140 of the CGST Act. There could have been little reason for us to interfere if assumption of jurisdiction by the respondent no. 3 on the ground appearing from the impugned show-cause notice were shown to be defensible with reference those provisions of law, which have become operational by due exercise of power in terms of sub-section (2) of Section 1 of the Amending Act. Even otherwise, it has not been shown to us that upon introduction of Explanation 3 of Section 140 of the CGST Act read with partly un-amended Explanations 1 and 2 thereof, the respondent no.

3 did have the jurisdiction to issue the impugned show-cause notice.

14. For the reasons as aforesaid, we hold that the present case is one where the impugned show-cause notice suffers from an error going to the root of the jurisdiction of the respondent no. 3 in assuming jurisdiction and is, accordingly, indefensible and liable to be set aside. We order accordingly.

5.26 Thus, we find that even as of today although Explanation 3 was inserted vide the Central Goods and Services Tax (Amendment) Act, 2018 with retrospective effect from 01.07.2017, the said explanation cannot be implemented in the absence of operationalisation of Explanation 1 and Explanation 2 by issuance of the notification.

5.27 We also make a note of the CBIC vide Circular No.87/06/2019-GST dated 02.01.2019, relied upon by the Leaned Counsel for the Appellant which at Para 4 clarifies as under:

4. Further, it has been decided not to notify the clause (i) of sub-section (b) of section 28 and clause (i) of sub-section (c) of section 28 of CGST (Amendment) Act, 2018 which link Explanation 1 and Explanation 2 of section 140 to section 140(1). This would ensure that the credit allowed to be transitioned under section 140(1) is not linked to credit of goods *in stock, as provided under Explanation 1, and credit of goods and services in transit, as provided under Explanation 2. However, the duties and taxes for which transition is allowed shall be governed by para 3.2 above.*

5.28 Thus, the CBEC itself has clarified that they won't be issuing notification to operationalize Explanation 1 and Explanation 2. Thus, the ratio of ***Godrej & Boyce supra*** will apply on all fours in the present case justifying the KKC credit transitioned by the Appellant and reliance on the amendment by way of Central Goods and Services Tax (Amendment) Act, 2018 is of no avail to the Revenue. The respondent also submitted in their written submission filed on 15.07.2026 that the revenue has preferred an Special Leave Petition (C) No. 3226 of 2019 before the Hon'ble Supreme Court against the judgment of Bombay High Court in Godrej & Boyce supra. We are of the firm view that merely because the revenue is before the Hon'ble Supreme Court that can not be sole reason to hold our decision, particularly when the Apex Court has not granted the stay from the operation of the said Bombay High Court judgment. Moreover, our view on the issue of transition of KKC is not only based on the judgment in the case of ***Godrej & Boyce*** supra but also on our independent interpretation of the provision and Board's circular dated 02.01.2019.

5.29 Thus, we hold that the transition of Krishi Kalyan Cess by the Appellant is in order.

Transitioned ITC of Rs. 22,14,479 under Section 140(6)

5.30 With respect to VAT credit transitioned into the GST regime, the Appellant had provided all the details required to claim VAT credit on Stock-in-Trade goods lying in stock as on 30.06.2017. There is no finding to the contrary to deny this amount of transitioned credit. Without giving any specific objection for denial of this credit, the lower authorities have rejected this credit considering it to be part and parcel of the other credits. Thus, in the absence of contrary findings, denial of this credit cannot be countenanced. Moreover, the revenue has not brought any material evidence on record to justify denial of VAT credit and consequent transition thereof to GST regime.

5.31 We also find that certain other reasons given to deny transitional credit such as incorrect address on the invoice, description of service not mentioned, copies of invoice or credit register not produced, etc are not sustainable at this stage especially when at the stage of claiming credit such objections were not raised. Further, with respect to Google invoice, the Appellant had provided the correct invoice at the time of appeal proceedings which has not been considered and as in other cases, this alleged discrepancy was never raised at the stage of claiming of credit.

5.32 With respect to invocation of penalty under Section 74 of the CGST Act and the consequent imposition of 100% penalty on the Appellant is wholly unjustified, inasmuch as the entire basis for initiation of the present proceedings arises from disclosures made by the Appellant by filing Form GST TRAN-1 and by furnishing detailed submissions from time to time before the authorities.

5.33 In view of the foregoing discussion, the ITC transitioned by the Appellant is in accordance with law. We accordingly hold the same to be eligible. Hence, the impugned order being not sustainable, is set aside.

5.34 The present Appeal filed by the appellant is allowed with consequential reliefs.

(Order pronounced in Open Court.)

Digitally signed by RAMESH NAIR
Date:31-07-2026 12:29:02 PM

(Shri Ramesh Nair)

Member(Judicial)

Digitally signed by PRALLHAD SHRIKRISHNA PARANJAPE
Date:31-07-2026 12:35:22 PM

(Shri Prallhad S. Paranjape)

Member (Technical)

Dated: 31.07.2026