IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5508 OF 2024

Laxmi Organic Industries Ltd.)
A company incorporated under)
the Companies Act, 1956)
having its office at)
A-22/2 & 3,)
MIDC Industrial Area, Mahad,)
MIDC Industrial Area, Mahad,)
MIDC, Raigad, Mumbai – 402 309.)
Through its)
Authorized Representative).....Petitioners

Versus

1. The Union of India)
Through the Revenue)
Secretary)
Ministry of Finance)
Department of Revenue)
North Block)
New Delhi – 110 001.)
)

2. Central Board)
of Indirect Taxes and Customs)
Ministry of Finance,)
North Block)
New Delhi – 110 001.)
)

3. The State of Maharashtra)
Through the Secretary)
Ministry of Finance)
Department of Revenue)
Mantralaya,)
Mumbai – 400 001.)
)

4. Goods and Service Tax Council)
GST Council Secretariat)

RUPALI RAJESH WAKODIKAR
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5th Floor, Tower II,)
Jeevan Bharti Building,)
Janpath Road, Connaught Place,)
New Delhi – 110 001.)
)
5. Asst./Dy. Commissioner)
of Central Excise)
Mahad Division,)
1st floor, C.G.O. Complex)
CBD Belapur,)
Navi Mumbai – 400 614.)
)
6. Addl.Commissioner, C.G.S.T)
Central Excise, Raigad,)
Commissionerate,)
4th Floor, Kendriya Utpad)
Shulk Bhawan, Plot No.1,)
Sector – 17, Khandeshwar,)
New Panvel, Raigad – 410 206.)
)
7. Commissioner of Central)
Tax (Appeals) Raigad,)
5th Floor, CGO Complex,)
CBD Belapur,)
Navi Mumbai – 400 614.).....Respondents

.....

Mr. Bharat Raichandani a/w Mr. Mahesh Raichandani, Mr. Bhagrati Sahu i/b UBR Legal Advocates, for the Petitioners.

Ms. Juimala Ostwal a/w Ms. Sangeeta Yadav for the Respondent Nos.1,2 & 4 to 7.

Ms.Shruti D. Vyas, Addl.G.P a/w Mr. Aditya R. Deolekar, A.G.P for the Respondent – State.

.....

CORAM : M. S. KARNIK &
SANDESH D. PATIL, JJ.

DATE : 30th OCTOBER, 2026

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JUDGMENT (PER SANDESH D. PATIL, J.)

1. Rule. Rule is made returnable forthwith with the consent of the parties and the matter is taken up for final hearing.

2. By the present petition, the petitioner is seeking to quash and set aside the impugned order dated 24/02/2022 issued by the respondent No.7. The impugned order is at 'Exhibit-A' to the petition.

3. The case of the petitioner is that the petitioner is a public limited company duly registered under the provisions of the Companies Act, 1956 and is engaged in manufacture of Ethyl Acetate. The petitioner is having common GST registration number for two units. The Superior Denatured Spirit (SDS), input required for manufacturing of Ethyl Acetate, is imported or procured from sugar factories. It is the contention of the petitioner that the said material was stored tanks at in unit No.2 and was transported to unit No.1 with due permission from the competent authorities.

4. The petitioner filed TRAN-1 form. Accordingly, the credit was carried forward under the GST regime and the credit was utilized

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thereinafter in terms of Section 140(5) of the Central Goods and Services Tax Act, 2017 ('**CGST Act**' for short) and rules made thereunder.

5. On 30/09/2020, a show-cause notice was issued by the respondent No.6 to the petitioner alleging that the petitioner has wrongly transitioned the credit of Rs.6,29,02,146/- under Section 140(5) of the CGST Act, 2017 and thus proposed to disallow the aforesaid input tax credit transferred to GST regime.

6. Reply was filed by the petitioner. The respondent No.6 confirmed the demand raised in the show-cause notice. The petitioner filed appeal before the respondent No.7. On 24/02/2022, the impugned order was passed.

7. The learned Counsel Mr. Raichandani appearing for the petitioner contended that the eligibility of the CENVAT credit / input tax credit was never under dispute. He submitted that the duty/tax has been paid on inputs. The returns were filed under the erstwhile regime. With introduction of GST, the petitioner has filed Declaration Form TRAN-1. The said form was accepted. Once this

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was done, the question of denying input tax credit due to mere inadvertent disclosure in Form TRAN-1 cannot arise.

8. He submitted that the petitioner has transitioned the impugned credit under Section 140(5) of the CGST Act. He submitted that the petitioner was entitled to transition credit under Section 140(1) of the CGST Act, 2017. He relied upon the judgment in the matter of ***Heritage Lifestyles and Developers Private Limited vs. Union of India***[1], in support of his contention.

9. The learned Counsel appearing for the respondent / Revenue supported the order.

10. We have heard the learned Counsel appearing for the parties and perused the documents on record.

11. There are two units of the petitioner's business. Both have common GST registration number 27AAACL2435R1Z5. The SDS stored in tanks in Unit-2 was transferred through pipeline to Unit No.1, and account to that effect was maintained, as is claimed by the petitioner. The different bills of entries with which the present

1 2020 (43) GSTL 33 (Bom.)

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petition is concerned are tabulated as under:

Sr. No.	Bill of entry	Invoice Date	Taxes paid on consignment	Full consighment receipt date at Unit No.2	Date on which entered in books of account
1.	9850021	26/05/2017	27,79,350/-	13/06/2017	31/07/2017
2.	9867908	29/05/2017	1,91,24,880/-	24/06/2017	31/07/2017
3.	9831676	25/05/2017	2,89,32,970/-	25/06/2017	31/07/2017
4.	2200201	22/06/2017	2,20,747/-	28/06/2017	31/07/2017
5.	2276191	29/06/2017	93.05,349/-	03/08/2017	31/07/2017
6.	2195070	22/06/2017	20,31,080/-	18/10/2017	23/08/2017
7.	2194771	22/06/2017	5,07,770	11/09/2017	23/08/2017
Total			6,29,02,146/-		

12. The entire dispute revolves around Section 140(1) and Section 140(5) of the CGST Act, 2017. Under Section 140 of the CGST Act, 2017 read with Rule 117 of the Rules, 2017, a migrated registered supplier is permitted to file a declaration in Form TRAN-1 intimating details of CENVAT credit of tax paid on inputs, capital goods, and input services in order to carry forward the same to the electronic credit ledger / input tax credit account under the CGST Act, 2017.

13. In the present case, the total quantum of transitional credit as is contended by the petitioner was Rs. 6,29,02,146/-. The quantum of credit is not disputed by the respondents. The petitioner filed TRAN-1 form within the prescribed time limit. Under bonafide

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belief, the petitioner transitioned the CENVAT credit into GST regime under Section 140(5) of the CGST Act, 2017.

14. On 30/09/2020, a show-cause notice was issued by the respondent No.6 alleging that the petitioner has wrongly transitioned the credit to the tune of Rs. 6,29,02,146/- under Section 140(5) of the CGST Act, 2017 and thus proposed to disallow the input tax credit transferred to GST regime. The show-cause notice proposed to recover the amount. By an order dated 26/02/2021, the show-cause notice was confirmed, and ultimately the respondent No.6 upheld the demand of reversal of input tax credit of Rs. 6,29,02,146/- on 24/02/2022. The respondent No. 7 dismissed the appeal.

15. Section 140(1) and Section 140(5) of the CGST Act, 2017 reads as under:

> *140. Transitional arrangements for input tax credit.—*
> ***(1)*** *A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the*
> *appointed day, furnished by him under the existing law [within such time and]in such manner as may be prescribed: Provided that the registered person shall not*

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be allowed to take credit in the following circumstances, namely:—

(i) where the said amount of credit is not admissible as input tax credit under his Act; or

(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or

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

…..

…..

…..

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

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

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

16. The eligibility of CENVAT credit / input tax credit was never

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under dispute. The returns were filed under the erstwhile regime. With introduction of GST, the petitioner has filed declaration in the nature of form TRAN-1. The said form was accepted. Once this is the case, the question of denial of input credit for mere inadvertent disclosure in the form TRAN-1 would not arise. The petitioner had taken transitional credit under Section 140(5) of the GST Act. The petitioner was entitled to transitioned credit pertaining to inputs in terms of Section 140(5) of the CGST Act. The petitioner had applied for extension beyond 30 days to the jurisdictional Commissioner in accordance with provisions of Section 140(5) of the CGST Act. Even the impugned order does not dispute the eligibility of transitional input credit. The impugned order notes that the petitioner is entitled to transitional credit under Section 140(1) of the CGST Act.

17. The whole case of the Revenue is that the petitioner has wrongly taken credit in terms of Section 140(5) instead of Section 140(1) of the CGST Act. TRAN-1 is a declaration which would be subject to verification and scrutiny by the Revenue. Only on the ground that the credit was transitioned under a wrong category/column could not be a ground to disallow the same. The

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unutilized credit arising on account of duty/tax paid is a vested right which cannot be taken away on a technical grounds. Right to input credit is an indefeasible right. Only because incorrect provision/column was mentioned was not sufficient to disallow the same.

18. This Court in the matter of ***Heritage Lifestyles and Developers Private Limited (supra)*** has held in paragraph Nos. 22 and 23 as under:

> *"22. Be that as it may, it is true that the above circular has been issued keeping in mind cases where difficulties have been faced by a section of tax payers owing to technical glitches on the GST Portal. However, the facts of this case are peculiar in as much as the respondents themselves admitted that the Petitioner is eligible for input tax credit but have rejected the claim because the ITGRC has not approved it saying that the tax payer has neither tried for saving/submitting or filing TRAN-1. There is no further explanation or clarification on this issue by the Respondents except to state the ITGRC description viz. "The tax payer has neither tried for saving/submitting or filing TRAN-1". Therefore it would be not necessary for us to even deal with the Circular under which the application for manual TRAN-1 has been made. When there is no dispute to the fact that the Petitioner is otherwise eligible for credit of Rs. 78,62,466/- then to deny the benefit of such Input credit merely on technical grounds cannot be justified. Merely*

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on technical ground an admitted input credit is sought to be denied to the Petitioner. That according to us would be wholly unfair and a travesty of justice. It is in these facts and circumstances that we are compelled to invoke our writ jurisdiction in this case.

23. In this context, we would like to refer to the Supreme Court decision in the case of Mangalore Chemicals and Fertilizers Ltd. v. Deputy Commissioner (supra). That was a case where there was no dispute that the appellant was entitled to the benefit of an exemption under notification dated 30.06.1969 nor there was a dispute that the refunds were eligible to the adjusted against sales tax payable for respective years, but the only controversy was whether the appellant not having actually secured "prior permission" would be entitled to adjustment having regard to the words of notification of 11th August, 1975, that until permission of renewal is granted by the Deputy Commissioner of Commercial Taxes, the new industry should not be allowed to adjust the refunds. Hon'ble Supreme Court aptly summarized the contention as under :-

"The contention virtually means this:

"No doubt you were eligible and entitled to make the adjustments. There was also no impediment in law to grant you such permission. But see language of Clause 5. Since we did not give you the permission you cannot be permitted to adjust" Is this the effect of the law?"

19. In the present case also, admitted input credit is sought to be denied to the petitioner on technical grounds. In absence of any

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dispute that the petitioner was otherwise eligible for the input credit of Rs. 6,29,02,146/- the impugned order is totally without jurisdiction and hence deserve to be quashed and set aside.

20. In the result, the following order is passed :

ORDER

Writ Petition No. 5508 of 2024 is allowed in terms of prayer clauses (a) to (e) which reads as under :

> *“a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions set aside and quash the impugned order dated 24.02.2022 issued by Respondent No.7 (Exhibits A);*
>
> *(b) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertainingto the Petitioner's case and after going into the validity and legality of the provisions direct the respondents to not initiate any coercive action seeking recovery of credit availed by the Petitioner during the pendency of the present petition;*

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(c) that this Hon'ble Court may be pleased to issue any writ, order or direction more particularly in the nature of a Writ of Declaration to hold that once there is no dispute regarding the eligibility of credit, the Petitioner has correctly transitioned the same within time specified under the Act, the said credit cannot be denied/disallowed on the count that the credit was transit under incorrect provision;

(d) that this Hon'ble Court may be pleased to issue any writ, order or direction more particularly in the nature of a Writ of Declaration to hold that the petitioner has correctly transitioned the credit under provisions of section 140(5) of the CGST Act, 2017;

(d) that this Hon'ble Court may be pleased to issue any writ, order or direction more particularly in the nature of a Writ of Declaration to hold that the petitioner has correctly transitioned the credit under provisions of section 140(1) of the CGST Act, 2017;

(e) that this Hon'ble Court may be pleased to issue any writ, order or direction more particularly in the nature of a Writ of Declaration to allow the credit transitioned in conformity with Section 140(5) read with Rule 117 of the CGST Rules, 2017 and Article 14, 19, 246, 248, 265, 268A, 286 and 302 read with Entry 41 and 83 of List 1 of VII Schedule of the Constitution of India and as also being within the legislative competence of Parliament under Article 269A of the Constitution of India in so far as it is impugned and pass such further or other orders as this Hon'ble Court may deem fit and necessary in the facts and circumstance of the case and thus render justice;"

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21. Rule is made absolute in the aforesaid terms and petition is disposed of accordingly.

(SANDESH D. PATIL, J.) (M. S. KARNIK, J.)

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