

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T) No. 1995 of 2023

M/s ESL Steel Limited Petitioner

Versus

1. Principal Commissioner, Central Goods & Services Tax & Central Excise at Central Revenue Building, 5A, Main Road, Doranda, Ranchi.
2. Additional Commissioner, Central Goods & Services Tax & Central Excise at Central Revenue Building, 5A, Main Road, Doranda, Ranchi.
3. Superintendent, Good & Services Tax & Central Excise, Chas Range-1, Division-1, Bokaro. Respondents

CORAM: Hon'ble Mr. Justice Rongon Mukhopadhyay
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : Mr. Biren Poddar, Sr. Adv.
Mr. Piyush Poddar, Adv.

For the Res. CGST : Mr. P.A. S. Pati, Adv.

05/11.07.2023

Per Deepak Roshan, J. The instant application has been preferred

for the following relief:-

(a) *For quashing and setting aside the Order-in-Original No. 26/GST/ADC/Ran/2023 dated 24.02.2023 (Annexure-9) passed by the Additional Commissioner, CGST & CEX, Ranchi (Respondent No. 2), whereby and whereunder the said Respondent No. 4, in a quite illegal and arbitrary manner, has confirmed the demand of Rs. 6,02,34,616/- u/s 74(9) of the Central Goods and Service Tax Act, 2017 on the ground of irregular availment of transitional credit during the period 2017-18, which includes the transitional credit of Rs. 5,10,21,204/- claimed by the Petitioner prior to 17.04.2018 and balance amount of Rs. 92,13,412/- has been claimed by the Petitioner as Transitional credit by filing new TRAN-1 in light of the Order passed by Hon'ble Supreme Court in the case of Union of India Vrs. Filco Trade Centre Pvt. Ltd. being SLP (C) No. 32709-32710/2018, without considering the show cause reply dated 20.02.2023 (Annexure-8) of the Petitioner and even without considering the Judgment of the Hon'ble Supreme Court passed in the case of Ghanshyam Mishra and Sons Private Ltd. Yrs. Edelweiss Asset*

Reconstruction Company Ltd. reported in (2021) 9 SCC 657, to the effect that no recovery and or proceeding can be continued against the Petitioner, for any alleged dues prior to 17.04.2018 (Annexure-1) i.e. the date on which the National Company Law Tribunal has approved the resolution plan of the Petitioner.

(b) For quashing and setting aside the Demand-cum-Notice to Show Cause dated 09.02.2023 (Annexure-5) issued by the Respondent No. 2, directing the Petitioner to file show cause reply within five days as to why ITC amounting to Rs. 6,02,34,616/- including interest and penalty should not be imposed upon the Petitioner, interalia on the misconceived ground of wrongful availment of benefit by the taxpayer in the form of transitional credit in TRAN-1 by discharging all the liabilities of the older period, therefore, all the constraints will also be applicable to them for all related measures under the provisions of the CGST Act, 2017 including admissibility as well as validity of TRAN-1 and since the Apex Court appears to be of the view that the current management was not a taxpayer for the period prior to 04.06.2018, i.e. the date of change of management and therefore the liability of the earlier management may not be shifted to the current management and therefore in a reciprocal approach, the credit available to the earlier management will not be available to the current Management as the current management was not a taxpayer during the period of procurement of inputs or capital goods as availed in the TRAN-1 filed on 30.11.2022, therefore, the whole amount taken as transitional credit is liable to be recovered along with applicable interest and penalties, which allegations of the Respondent No. 2 based on his imagination, as there is no finding of Hon'ble Apex Court in this regard.

(c) For a direction upon the Respondents to immediately and forthwith restore the Form TRAN-1 filed by the Petitioner, which it is duly entitled to under the facts and circumstances of this case.

(d) For restraining the Respondents from taking any coercive action for realizing any amount from the petitioner pursuant to the aforesaid Order-in-Original No. 26/GST/ADC/Ran/2023 dated 24.02.2023 (Annexure-9) passed by the Respondent No. 2 concerning the period 2017-18, especially in view of the fact that the Resolution Plan submitted by M/s Vedanta Limited under Section 30 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the IB Code, 2016) for acquisition of control of the

Petitioner, has already been approved by the National Company Law Tribunal, Kolkata Bench, Kolkata vide Order dated 17.04.2018 (Annexure-1) under Section 31(1) of the said IB Code, 2016, which is binding upon the corporate debtor and its employees, members, creditors, guarantors other stakeholders and further Section 238 of the said IB Code, 2016 provides that the provisions of the Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

(e) For any other appropriate Writ(s), Order(s), Direction(s) as may be deemed fit and proper by your Lordships for doing substantial and conscionable justice to the Petitioner.

2. The brief fact of the case is that the State Bank of India, being the major financial institution of the Petitioner, had filed a Company Petition being CA(IB) No. 361/KB/2017 before National Company Law Tribunal, Kolkata under the provisions of Insolvency and Bankruptcy Code, 2016, for initiating Corporate Insolvency Resolution Process of the Petitioner. Vide Order dated 21.07.2017, the said Application of SBI was admitted and a Resolution Professional was appointed as the Interim Insolvency Resolution Professional (IRP).

During the course of its proceeding, the said Resolution Professional (RP) filed a Resolution Plan dated 29.03.2018 being CA (IB) No. 277 of 2018 of M/s Vedanta Limited for the approval by the NCLT under Section 31(1) of the Code, 2016, which Resolution Plan was duly approved by the Committee of Creditors (CoC) by 100% voting shares of the Committee of Creditors (CoC).

Aforesaid Resolution Plan dated 29.03.2018 submitted by the Resolution Professional (RP) for approval under Section 31(1) of the Code, 2016, was duly considered by the NCLT and after due consideration, vide Order dated 17.04.2018, the NCLT has been pleased to approve the

same (Annexure-1).

However, before the approval of Resolution Plan and during the pendency of IBC proceeding, the earlier Management of the Petitioner Company i.e., before taking over the management by M/s Vendanta, had filed Original TRAN-1 on 27.09.2017 and while filing the said Form TRAN-1, as the GST Portal did not allow the Petitioner to disclose and transition of CENVAT Credit on the Capital Goods received during the month of July, 2017 and August, 2017 amounting to Rs. 92,13,412/-.

Petitioner vide Letter dated 22.12.2018 requested the Respondent No. 1 to allow it to file revised Form GST TRAN-1 by giving instruction to the technical team to enable the option to file revised TRAN-1 in the online GSTN portal (Annexure-2). CREA Audit Team of the Respondents raised objections in Audit Report by the Respondent Department by issuing Letters dated 23.08.2021 and 10.09.2021. Petitioner vide its Letter dated 26.10.2021 has submitted the detailed reply in response to the aforesaid Audit Report. After submissions of the aforesaid reply, no further letters/notices were issued to the Petitioner in this regard by the Respondent Department. Moreover, as the TRAN-1 issue was quite a bit of extenuating issues pertaining to system glitches, technical errors, inability to re-adjust the credit once the onetime revision is done, inability to take the credit that got accumulated beyond the implementation date, and therefore the Hon'ble Supreme Court vide Order dated 22.07.2022 and subsequently vide Order dated 02.09.2022 passed in the case of ***Union of India Vrs. Filco Trade Centre Put. Ltd. being SLP (C) No. 32709-32710/2018*** has put the issue to rest by ordering portal to be re-opened for filing TRAN-1, (Annexure-3 Series).

In pursuance of the aforesaid liberty granted by the Hon'ble Apex Court, the Petitioner revised its TRAN-1 on 30.11.2022 and sought to avail Input Tax Credit amounting to Rs. 92,13,412/- against the 86 invoices of Capital Goods, which were not availed earlier, under Section 140(1) of the CGST Act, 2017. Petitioner informed the Respondent No. 3 vide Letter dated 05.12.2022 regarding submissions of aforesaid Revised TRAN-1, (Annexure-4). Subsequently, vide Letter dated 25.01.2023, the Petitioner submitted declaration in relation to TRAN-1 filed (Original and Revised) before the Respondent No. 3, (Annexure-4).

However, instead of allowing the aforesaid TRAN-1, the Respondent No. 2 issued a Demand-cum-Notice to Show Cause dated 09.02.2023, directing the Petitioner to file show cause reply within five days as to why ITC amounting to Rs. 6,02,34,616/- including interest and penalty should not be imposed upon the Petitioner, (Annexure-5). Vide the aforesaid Demand-cum-Notice to Show Cause dated 09.02.2023 (Annexure-5), the Respondent No. 2 had directed to file Show Cause Reply within 5 days and fixed the date of personal hearing on 14.02.2023 i.e., within a period of five days.

Petitioner vide Letter dated 14.02.2023 requested the Respondent No. 2 to allow three weeks time to file detailed reply to the said Demand-cum-Notice to Show Cause dated 09.02.2023 (Annexure-5) as it is not possible for the Petitioner to file detailed show cause reply in such a short span of time, (Annexure-6). However, Superintendent (adjudication) Ranchi on the same day i.e., on 14.02.2023, a Notice dated 14.02.2023 has been served upon the Petitioner fixing the date of personal hearing on the next week i.e., on 21.02.2023, (Annexure-7).

Petitioner filed a show-cause Reply dated 20.02.2023 before the Respondent No. 2 explaining all the facts of the matter and requested the Respondent no. 2 to allow the credit as part of the Electronic credit ledger and attended the personal hearing on 21.02.2023 before the Respondent No. 2, (Annexure-8).

Respondent No. 2 vide its Order-in-Original No. 26/GST/ADC/Ran/2023 dated 24.02.2023, has confirmed the demand of Rs. 6,02,34,616/- u/s 74(9) of the Central Goods and Service Tax Act, 2017 on the ground of irregular availment of transitional credit during the period 2017-18, which includes the transitional credit of Rs. 5,10,21,204/- claimed by the Petitioner prior to 17.04.2018 and balance amount of Rs. 92,13,412/- has been claimed by the Petitioner as Transitional credit by filing new TRAN-1 in light of the Order passed by Hon'ble Supreme Court in the case of ***Union of India Vrs. Filco Trade Centre Put. Ltd. being SLP (C) No. 32709-32710/2018***, without considering the show cause reply dated 20.02.2023 (Annexure-8) of the Petitioner and even without considering the Judgment of the Hon'ble Apex Court passed in the case of ***Ghanshyam Mishra and Sons Private Ltd. Vrs. Edelweiss Asset Reconstruction Company Ltd.*** reported in ***(2021) 9 SCC 657***, to the effect that no recovery and or proceeding can be continued against the Petitioner, for any alleged dues prior to 17.04.2018 (Annexure1) i.e., the date on which the National Company Law Tribunal has approved the resolution plan of the Petitioner, (Annexure-9).

3. Mr. Biren Poddar, learned senior counsel for the petitioner submits that the Respondent No-2 vide Order-in-Original dated 24.02.2023, in a quite illegal and arbitrary manner and without considering the show cause reply

dated 20.02.2023 (Annexure-8) of the Petitioner and even without considering the Judgment of the Hon'ble Supreme Court passed in the case of *Ghanshyam Mishra and Sons Private Ltd. (supra)*, to the effect that no recovery and/or proceeding can be continued against the Petitioner, for any alleged dues prior to 17.04.2018 (Annexure-1) i.e., the date on which the National Company Law Tribunal has approved the resolution plan of the Petitioner, has confirmed the demand of Rs.6,02,34,616/- u/s 74(9) of the Central Goods and Service Tax Act, 2017 on the ground of irregular availment of transitional credit during the period 2017-18, which includes the transitional credit of Rs. 5,10,21,204/- claimed by the Petitioner prior to 17.04.2018 and balance amount of Rs. 92,13,412/- has been claimed the Petitioner as Transitional credit by filing new TRAN-1 in light of the Order passed by Hon'ble Apex Court in the case of *Union of India Vrs. Filco Trade Centre Put. Ltd. being SLP (C) No. 32709-32710/2018*.

Mr. Poddar contended that the Order-in-Original dated 24.02.2023 (Annexure-9) of the Respondent No. 2, is illegal and arbitrary and has been passed without considering the show cause reply dated 20.02.2023 (Annexure-8) of the Petitioner and even without considering the Judgment of the Hon'ble Apex Court passed in the case of *Ghanshyam Mishra and Sons Private Ltd. (supra)*.

Mr. Poddar further submits that as per the aforesaid judgment of Hon'ble Apex Court no recovery and or proceeding can be continued against the Petitioner, for any alleged dues prior to 17.04.2018 (Annexure-1) i.e., the date on which the National Company Law Tribunal has approved the resolution plan of the Petitioner. *The Respondent No. 2 has illegally and arbitrarily confirmed the demand of*

Rs.6,02,34,616/- u/s 74(9) of the Central Goods and Service Tax Act, 2017 and imposed interest and penalty, on the ground of irregular availment of transitional credit during the period 2017-18, which includes the transitional credit of Rs.5,10,21,204/- claimed by the Petitioner for the period prior to 17.04.2018 and balance amount of Rs.92,13,412/- has been claimed by the Petitioner as Transitional credit by filing new TRAN-1 in light of the Order passed by Hon'ble Supreme Court in the case of Union of India Vrs. Filco Trade Centre Pvt. Ltd. being SLP (C) No. 32709-32710/2018.

He further submits that the TRAN-1 issue was quite a bit of extenuating issues pertaining to system glitches, technical errors, inability to re-adjust the credit once the onetime revision is done, inability to take the credit that got accumulated beyond the implementation date, and therefore the Hon'ble Apex Court in the case of *Union of India Vrs. Filco Trade Centre Pvt. Ltd. (supra)* has put the issue to rest by ordering portal to be re-opened for filing TRAN-1.

He contended that the aforesaid judgment of the Hon'ble Supreme Court passed in the case of *Ghanshyam Mishra and Sons Private Ltd. (Supra)*, which is in favour of the Petitioner, cannot be twisted by the Respondent by trying to take umbrage on the said Judgment of the Hon'ble Apex Court from the perspective of recovery of liabilities post IBC proceedings to contend that "liabilities go parallel with the assets".

From perusal of the Judgment of the Hon'ble Supreme Court passed in the aforesaid case of *Ghanshyam Mishra and Sons Private Ltd. (supra)*, it will clear that it is only the past obligation of the past period gets extinguished once the new management has taken over the Company as

part of the Resolution Plan, and there is nothing in the said judgment which says that the past credit due to the company gets expunged.

Relying upon the aforesaid submissions, learned senior counsel submits that the instant application be allowed.

4. Mr. P.A.S Pati, learned counsel for the State respondent submits that the Respondent no.2 has rightly passed the O-I-O dated 24.02.2023 after considering the reply dated 24.02.2023 to the Show Cause Notice dated 09.02.2023 and judgment of Hon'ble Apex Court passed in the case of *Ghanshyam Mishra and Sons Pvt Ltd.* (supra). The violation of act and rule which is the basis for denial of TRAN-1 credit amounting to Rs.6,02,34,616/- is categorically explained in Para 4 and 5 of the adjudication order issued dated 24.02.2023. The above violations have never been denied by the petitioner in their reply which means that the above alleged violations are correct and ITC is not available to them as per Act and Rules. Further, the petitioner had requested to drop all proceedings on the basis of the judgment dated 13.04.2021 of the Hon'ble Apex Court from recovery against the liabilities. In this regard, the adjudicating authority has categorically explained the reasons in para-7 of the adjudication order issued dated 24.04.2023.

Mr. Pati further submits that the respondent is not trying to take exception of the said judgment of the Hon'ble Apex Court, but demanding the ineligible ITC availed by the petitioner as per the provisions of CGST Act, 2017.

5. Having heard learned counsel for the parties and after going through the averments made in the respective affidavits and the documents annexed therein and the

judgments passed by the Hon'ble Apex Court referred to herein above it appears that the Petitioner revised its TRAN-1 on 30.11.2022 and sought to avail Input Tax Credit amounting to Rs. 92,13,412/- against the 86 invoices of Capital Goods, which were not availed earlier, under Section 140(1) of the CGST Act, 2017.

It also emerges that as per the judgment of Hon'ble Apex Court in the case of *Ghanshyam Mishra and Sons Private Ltd. (supra)*, no recovery and or proceeding can be continued against the Petitioner, for any dues prior to 17.04.2018 (Annexure-1) i.e., the date on which the National Company Law Tribunal has approved the resolution plan of the Petitioner. From perusal of the aforesaid Judgment, it is crystal clear that it is only the past obligation of the past period gets extinguished once the new management has taken over the Company as part of the Resolution Plan.

6. At the outset it is clarified that the contention of the Petitioner-Company that there is nothing in the said judgment which says that the past credit due to the company gets expunged; is misconceived. As a matter of fact, the liability of the earlier management may not be shifted to the current management but at the same time, the credit available to the earlier management will also not be available to the current management as the current management was not a taxpayer during the period of procurement of inputs or capital goods as availed in the TRAN-1 filed on 30.11.2022

Accordingly, we hold that on the one hand; the Respondent No. 2 has illegally and arbitrarily confirmed the demand of Rs.6,02,34,616/- u/s 74(9) of the Central Goods and Service Tax Act, 2017 and imposed interest and

penalty, on the ground of irregular availment of transitional credit during the period 2017-18, which includes the transitional credit of Rs.5,10,21,204/- claimed by the Petitioner for the period prior to 17.04.2018 and balance amount of Rs.92,13,412/- has been claimed by the Petitioner as Transitional credit by filing new TRAN-1; but at the same time the petitioner can also not take advantage of the ITC of the earlier period i.e., any dues prior to 17.04.2018 (Annexure-1); the date on which the National Company Law Tribunal has approved the resolution plan of the Petitioner.

7. Learned commissioner while deciding the issue as held as under:-

“4. I find that the said noticee have requested to drop all the proceedings on the basis of the judgment dated 13.04.2021 of the Hon'ble Supreme Court from recovery against the liabilities, but it is well established that the liabilities go parallel with the assets. The taxpayer have opted to avail the benefit of Transitional credit for the period prior to change of management. On perusal of the said judgment, it appears that the judgment is for Electrosteel Steels Limited. Bokaro, Jharkhand vs.State of Jharkhand and Others (CIVIL APPEALS ARISING OUT OF SPECLAL LEAVE PETITION (CIVIL) NOS. 71477150 of 2020) wherein the Hon'ble Supreme Court has ordered not to recover the dues of Central/State Taxes pertaining to the period of previous management. But the instant case pertains to wrongful availment of benefit by the taxpayer in the form of transitional credit in TRAN- 1 discarding all the liabilities of the older period, therefore, all the constraints will also be applicable to them for all related measures under the provisions of the CGST Act, 2017 including admissibility as well as validity of TRAN-1. Since the Apex Court appears to be of the view that the current management was not a taxpayer for the period prior to 04.06.2018. i.e., the date of change of management and therefore the liability of the earlier management may not be shifted to the current management. In a reciprocal approach, the credit available to the earlier management will also not be available to the current management as the

current management was not a taxpayer during the period of procurement of inputs or capital goods as availed in the TRAN-1 filed on 30.11.2022. Therefore, the whole amount taken as transitional credit is liable to be recovered along with applicable interest and penalties.

5. *The said noticee has quoted Notification No. 11/2020 - Central Tax dated 21.03.2020 and Circular No. 134/04/2020 - GST dated 23.3.2020 and 138/08/2020GST dated 06.05.2020 in support of their defence. But I find from the case records that these Notification and Circulars are not applicable to the case of the said noticee as their defence reply is totally silent on the procedures followed by them.”*

8. After going through the relevant portion of the impugned order it can be safely held that the adjudicating authority was correct in holding that as the Apex Court was of the view that the current management was not a taxpayer for the period prior to 04.06.2018. i.e., the date of change of management and therefore the liability of the earlier management should not be shifted to the current management. Likewise, the credit available to the earlier management will also not be available to the current management as the current management was not a taxpayer during the period of procurement of inputs or capital goods as availed in the TRAN-1 filed on 30.11.2022.

Nevertheless, at the last portion of the order it misdirected itself in holding that the whole amount taken as transitional credit is liable to be recovered along with applicable interest and penalties. This part of the order is certainly against the ratio of the judgments passed by the Hon'ble Apex Court in the case of *Ghanshyam Mishra and Sons Private Ltd. (supra)*, as such, the same requires interference.

9. Consequently, the Order-in-Original dated 24.02.2023 (Annexure-9) passed by the Additional

Commissioner, CGST & CEX, Ranchi (Respondent No. 2), whereby the Respondent No. 4, has confirmed the demand of Rs. 6,02,34,616/- u/s 74(9) of the Central Goods and Service Tax Act, 2017, is quashed and set aside along with all consequential orders.

However, we categorically hold that the petitioner can also not take credit of the ITC of the earlier period i.e., prior to 17.04.2018 (Annexure-1); the date on which the National Company Law Tribunal has approved the resolution plan of the Petitioner. Hence, the petitioner is not entitled to claim of Rs. 92,13,412/- which has been claimed by the Petitioner as Transitional credit by filing new TRAN-1 in light of the Order passed by Hon'ble Supreme Court in the case of *Union of India Vrs. Filco Trade Centre Put. Ltd.* being SLP (C) No. 32709-32710/2018.

29. As a result, the instant writ application stands partly allowed. If any I.A. is pending is also closed.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

Fahim/-

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