

**GST authorities lacks jurisdiction to examine correctness of credit transitioned from erstwhile tax regime**

The Hon'ble High Court, Jharkhand ("**the High Court**") in the case of *M/s. Usha Martin Ltd. v. Additional Commissioner & Ors. (W.P.(T) No. 3055 of 2022) dated November 10, 2022*, quashed the proceedings initiated by Joint Commissioner ("**the Respondent**") by issuing Show Cause Notice dated September 13, 2021 ("**SCN**") under Section 73 of the Central Goods and Services Tax, 2017 ("**the CGST Act**") and held that Goods and Services Tax Authorities ("**the GST Authorities**") does not have jurisdiction to determine whether CENVAT credit was admissible under the respective Act.

**Facts:**

M/s. Usha Martin Ltd. ("**the Petitioner**") is engaged in the business of manufacturing iron and steel products and was registered in the Central Excise Act, 1944 ("**the Excise Act**") and Finance Act, 1994 ("**the Finance Act**") in erstwhile tax regime. Post July 01, 2017, the Petitioner registered under GST. The Petitioner carries forwarded CENVAT credit under GST regime by filing GST TRAN-1. The Respondent issued the SCN alleging that Petitioner could not claim CENVAT credit in lieu of invoices raised by an entity in erstwhile tax regime as the same was contravention of the Excise Act and Finance Act read with Cenvat Credit Rules, 2004 ("**CCR**") on March 30, 2022. Thereafter, the Respondent vide Order-In-Original March 30, 2022 ("**the Order**") disallowed the CENVAT credit carried forwarded by the Petitioner on the ground stated above.

Petitioner filed the writ petition questioning the jurisdiction of the GST Authorities to examine the correctness of the CENVAT credit.

**Issue:**

Whether GST Authorities can assess the admissibility of CENVAT credit availed under the pre-GST regime?

**Held:**

The High Court held that:

- Section 73 of the CGST Act, makes it clear that proceeding under this section can only be initiated for non-payment of any tax or short payment of such tax for erroneous refund of such tax or for wrongly availing the input tax credit which are admissible under the CGST Act.
- Section 73 of the CGST Act does not provide power to adjudicating authority to issue notice pertaining to CENVAT credit. Therefore, invoking Section 73 in the present case was not proper in the eyes of law.
- Therefore, initiation of proceedings by the Respondent under Section 73 (1) of the CGST Act for contravention of the Excise Act and the Finance Act was beyond authorities jurisdiction.

Hence, the High Court quashed the Order passed by the Respondent as being without jurisdiction.

**Relevant Provision:**

**Section 73 of the CGST Act:**

*(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit,*

*requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.*

*(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.*

*(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.*

*(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.*

*(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.*

*(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.*

*(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as*

*provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.*

*(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.*

*(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.*

*(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.*

*(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.*

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