

Penalty should not be imposed on ITC wrongly availed when Transitional Credit used for discharging tax liability

The Hon'ble Madras High Court in the case of *M/s. PMA Controls India Limited v. Joint Commissioner of Central Tax and others, Chennai [W.P. No. 16638 of 2023 dated September 20, 2023]* allowed the writ petition and held that the penalty could not be imposed on wrongly availed Input Tax Credit as there is no change in tax liability of the Assessee when Transitional Credit has been debited for discharging tax liability and wrongly availed Input Tax Credit has been reversed.

Facts:

M/s. PMA Controls India Limited (**"the Petitioner"**), is a Central Excise Assessee. The Petitioner filed a TRAN-1 Application under Form TRAN-1 for the transition of unutilized Input Tax Credit (**"ITC"**) of Rs.12,47,610/- as of June 30, 2017. However, due to technical glitches, the Petitioner's claim for transition of ITC failed.

The Petitioner again filed TRAN-1 Application on August 17, 2021, claiming the transition of ITC, which was allowed by the Revenue Department (**"the Respondent"**). During the time period the TRAN-1 Application was processed, the Petitioner wrongly availed ITC of the amount of Rs. 12,47,610/- in Electronic Credit Ledger and utilized the ITC availed for discharging tax liability. The ITC of Rs. 12,43,000/- was transitioned on August 08, 2021, thereby, the Petitioner debited the amount of Rs. 12,47,610, which was claimed as ITC and utilized earlier.

The Petitioner was issued a Show Cause Notice dated July 19, 2021 (**"the SCN"**) by the Respondent, calling upon the Petitioner to show cause as to why the amount of Rs. 12,47,610/- wrongly claimed as ITC should not be denied.

The Respondent vide Order-In-Original No. 05/2022 dated February 28, 2022 (**"the OIO"**) declined the ITC claimed by the Petitioner, and demanded the Transitional Credit of Rs.

12,47,610/- and imposed a penalty for the amount of Rs. 12,47,610/- under Section 122(2)(a) of the Central Goods and Services Tax Act, 2017 (“the CGST Act”) read with Section 74(1) of the CGST Act.

Aggrieved by the OIO passed by the Respondent, the Petitioner filed an appeal before the Respondent. However, the Respondent vide Order-in-Appeal No. 267/2022-JC (GST-II) dated August 4, 2022 (“the Impugned Order”) partly allowed the appeal by rejecting Petitioner’s claim for ITC.

Aggrieved by the Impugned Order, the Petitioner filed a writ petition before the Hon’ble Madras High Court for setting aside of Impugned Order.

Issue:

Whether penalty can be imposed on wrongly availed ITC when Transitional Credit allowed has been debited for discharging tax liability?

Held:

The Hon’ble Madras High Court in ***W.P. No. 16638 of 2023*** held as under:

- Observed that, the issue is revenue neutral, as the Petitioner was entitled to transmit the ITC lying unutilized under the CENVAT account, which was lying unutilized under GST. Due to technical glitches, the transition could not be allowed under Section 140 of the CGST Act.
- Relying upon the judgement of ***Tvl. Rashtriya Ispat Nigam Limited v. Deputy Commissioner (CT) III [W.P. 22241 of 2019 dated June 20, 2022]***, wherein the Court held that the transition of ITC, even if incorrect, the Petitioner’s only way to protect the claim was to avail the transition of ITC and taking hyper-technical view while the imposition of penalty and levy of interest is not sustainable.

- Opined that, the amount for the utilization of ITC would have been available if the Petitioner was allowed a successful transition of ITC. Thus, the Petitioner has not caused any loss to the revenue, as the Petitioner utilized the Transitional Credit as regular ITC and wrongly availed ITC has been reversed.
- Held that, there exists no reason to sustain the Impugned Order and impose the interest and penalty on the Petitioner as there is no change in the tax liability. Hence, Writ Petition is allowed.

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