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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 11539 of 2019**

Apar Industries Limited

.....Petitioner

V/s.

Union of India & Ors.

.....Respondents

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Mr. Prakash Shah, Mr. Mihir Mehta and Mohite Raval i/b PDS Legal,  
Advocate for the Petitioner.

Mr. Pradeep S. Jetly, Senior Advocate, a/w Mr. Jitendra Mishra, Mr D.B.  
Deshmukh, Ms Sangeeta Yadav, Mr Sham Walve, Advocate for the  
Respondents.

Smt S.D. Vyas, B-Panel Counsel for the Respondent-State.

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**CORAM : K.R.SHRIRAM &  
GAURI GODSE, JJ.**

**DATE : 23<sup>rd</sup> AUGUST, 2022.**

**P.C.**

1. The Petition is filed in relation to the objections raised with regard to transition and distribution of CENVAT Credit by Input Service Distributor (ISD) of the balance of Service Tax/ Excise Duty as on 30.06.2017.
2. Since filing declaration in Form GST TRAN-1 was the only route for transitioning of the accumulated CENVAT credit balance in the ISD

registration under the erstwhile service tax regime, Petitioner had filed the declaration in Form GST TRAN-1 for transitioning the credit of Rs.2,12,20,870 under Section 140 of the CGST Act within the prescribed time and in the prescribed manner.

3. The transition of the aforesaid CENVAT credit was permitted and the said balance of Rs.2,12,20,871 got credited to the Electronic Credit Ledger (“ECL”) of the ISD registration on the GST common portal. Vide Letter F.no.V/CGST/NM/Dn.-1/R-1/TRAN-1/APAR/226/18-19 dated 13.02.2019, the Ld. Joint Commissioner, CGST & Cx, Div – I, GST Commissionerate, Navi Mumbai has confirmed as follows:

*“Please refer to your request letter no. AIL:BZ/ISD/TRAN-1/2018-19 dated 07.02.2019 on the above subject.*

*As per your request it is informed that, TRAN-1 verification in respect of GSTIN – 27AAACG1840M2ZK for allowing transitional Credit of Rs. 2,12,20,871 (Rs. 1,81,36,198 under Table 5(a) and Rs. 30,84,673 under Table 7(b)) has been completed by this office and found in Order.”*

4. Petitioner issued the invoices to transfer the transitional credit from its ISD registration to its other units. Basis the said invoices, the respective units availed the input tax credit in its Electronic Credit

Ledger by disclosing the said amounts transferred by the ISD registration in its return filed in Form GSTR – 3B.

5. Majority of the recipient units of Petitioner (13 out of 18) to whom the said credit was transitioned, have been issued identical Show Cause Notices *inter-alia* alleging that (i) the ISD unit of Petitioner has erroneously transitioned the credit from the erstwhile regime to the GST regime; and (ii) the credit distributed by the ISD unit of Petitioner has been wrongly availed and utilized by the recipient units for payment of output GST liability of the recipient unit.
6. The case of Respondents is that (i) Petitioner has wrongly migrated the erstwhile ISD registration to the GST regime and transitioned the credit which is prohibited as per CGST Act, 2017; (ii) ISD registration under the GST regime does not enjoy the status of an assessee obtaining registration under GST for carrying out his business, and (iii) ISD registered under GST is not eligible for ITC under Section 16 as he is not using the inputs in the course of or furtherance of his business for making taxable supplies as ISD.

7. It is Petitioner's case that there is no dispute with regard to eligibility of Petitioner to the claim and/or transition the aforesaid Credit. The entire dispute only pertains to the procedure for transition of the said CENVAT credit by the ISD unit and its distribution to the other units of Petitioner. It is not the case of the department, that Petitioner has transitioned/ distributed ineligible credit, i.e., there is no loss to revenue on account of the said transition/ distribution of the credit.
8. In the present case, the Joint Commissioner has, post detailed verification, confirmed in writing that Petitioner has correctly transitioned the credit in its ISD registration.
9. It appears that most of the procedural issues have arisen due to the fact that the GST was at the nascent stage of its implementation and there was a prevalent ambiguity with regard to the transitional provisions.
10. The Hon'ble Apex Court to aid the assesseees to overcome the procedural/ technical hurdles, in the case of **Union of India & Another Vs Filco Trade Centre Pvt. Ltd. & Another**<sup>1</sup> and other similar batch of Petitions in relation to the transition of credit from the erstwhile regime

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to the GST regime by an Order dated 22<sup>nd</sup> July 2022, has, inter-alia, observed as follows:

*“Having heard learned Additional Solicitor General, learned counsel appearing for different States and learned counsel appearing for different private parties and having perused the record, we are of the view that it is just and proper to issue the following directions in these cases:*

- 1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.*
- 2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).*
- 3. GSTN has to ensure that there are no technical glitch during the said time.*
- 4. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.*
- 5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.*
- 6. If required GST Council may also issue appropriate guidelines to the field*

*formations in scrutinizing the claims.”*

11. We also intend to adopt the same approach. Therefore, we hereby direct Respondents to open the common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months, i.e., w.e.f. 01.09.2022 to 31.10.2022 in compliance with the Order of the Hon’ble Supreme Court of India in Filco Trade (supra).
12. Accordingly, Petitioner’s recipient units can file revised declaration in Form GST TRAN 1, either electronically or manually (where electronically is not possible), for taking the credit already distributed to them by the ISD unit of Petitioner by issuing invoices.
13. Once, such a revised declaration is filed by the concerned recipient units of Petitioner, the credit already taken by the said units shall be treated to have been taken validly on the date on which it was originally taken. However, no further credit based on revised declaration in Form TRAN-1 shall be claimed by Petitioner, as the said filing is purely for regularizing the earlier action of transition and distribution of Cenvat credit by the ISD registration of Petitioner.
14. In case the said credit is once again reflected in the Electronic Credit

Ledger of the recipient units, Petitioner undertakes that its recipient units shall make a debit entry in the Electronic Credit Ledger to the extent such credit has already been claimed earlier.

15. Once, the credit taken by the respective units is regularized by filing revised electronic or manual declaration (as the case maybe) in Form GST TRAN – 1, the credit balance shown in Electronic Credit Ledger of the ISD unit of Petitioner shall be deemed to have lapsed/ deleted.
16. Respondents and the authorities concerned shall not proceed to adjudicate the above and other Show Cause Notices issued to Petitioner and their units for transition of credit in the Petitioner's ISD registration and its subsequent distribution.
17. Liberty to Petitioner to raise all other issues/contentions/reliefs raised in this Writ Petition in the appropriate proceedings at appropriate time, if need arises.
18. With the consent of the Counsels, Petition is accordingly disposed.

**[GAURI GODSE, J.]**

**[K.R.SHRIRAM, J.]**