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GST Authorities Cannot Reassess Transitional Input Tax Credit (ITC) That Was Never Disputed Under the Erstwhile Regime

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The transition to GST was intended to ensure a seamless carry forward of accumulated credits under the erstwhile indirect tax regime. Chapter XX of the CGST Act was enacted to facilitate this objective. However, nearly nine years after GST's rollout, litigation over transitional credit carried through Form GST TRAN-1 continues, particularly on the question whether GST authorities can reassess the eligibility of credits that had validly accrued under the repealed laws.

The GST Appellate Tribunal (GSTAT), Thane Bench, in ***Tata Unistore Limited v. Commissioner, CGST & Ex., Navi Mumbai Commissionerate*** [2026] 189 taxmann.com 1 (GSTAT - THANE) has lent significant precedential support to the judicial view that GST authorities cannot invoke Section 74 of the CGST Act to reassess CENVAT and VAT credits that had accrued under the erstwhile regime and were never disputed under the applicable laws.

Facts

Tata Unistore Limited transitioned CENVAT credit of service tax, Krishi Kalyan Cess (KKC) and VAT credit on stock-in-trade aggregating approximately Rs. 32.8 crore through Form GST TRAN-1. Owing to legal uncertainty, the company subsequently reversed the KKC credit under protest. Importantly, none of these credits had ever been questioned under the erstwhile laws.

Despite this, the department issued a Show Cause Notice under Section 74 of the CGST Act alleging ineligible transitional credit. The demand, along with a 100% penalty, was confirmed by the adjudicating authority and upheld in appeal.

Tribunal's Findings

The Tribunal harmoniously interpreted Sections 140, 142(6)(*a*) and 174(2)(*e*) of the CGST Act and held that while Section 140 prescribes the conditions for carrying forward credit, it does **not empower GST authorities to undertake a fresh assessment** of credits validly earned under the repealed laws.

If the Revenue considers any CENVAT or VAT credit to have been wrongly availed, proceedings must be initiated under the relevant erstwhile legislation, such as Rule 14 of the CENVAT Credit Rules, 2004, and not under Section 74 of the CGST Act. The Tribunal held that the lower authorities had incorrectly treated the proviso to Section 140(1) as a licence to reopen undisputed credits.

The decision follows the principles laid down in ***Usha Martin Ltd. v. Additional Commissioner of CGST & CEx.*** [W.P (T) No. 3055 of 2022, dated dated 18-8-2022]**,** ***Steel Authority of India Ltd. v. State of Jharkhand*** [2025] 172 taxmann.com 105 (Jharkhand) **and** ***Kunjal Synergies Pvt. Ltd. v. Assistant Commissioner of CGST & CEX*** [2025] 172 taxmann.com 371/96 GSTL 3 (Calcutta) all of which recognise that disputes regarding the admissibility of CENVAT credit must be examined under the erstwhile statutes and not under Sections 73 or 74 of the CGST Act.

The Tribunal also rejected the Revenue's insistence on **invoice-wise substantiation of a closing balance**. A closing balance is merely the cumulative result of opening balances, credits availed and credits utilised over several years. Requiring taxpayers to correlate such balances with individual invoices years later was held to be wholly unreasonable.

KKC Credit and the Legislative Drafting Error

The Revenue relied upon the retrospective insertion of Explanation 3 to Section 140, which excluded unspecified cesses from the definition of "eligible duties and taxes."

The Tribunal noted that CBIC itself, through Circular No. 87/06/2019-GST, had acknowledged that the provisions linking Explanations 1 and 2 to Section 140(1) were intentionally never notified because of a legislative drafting error. Relying on the Bombay High Court's decision in ***Godrej & Boyce***, the Tribunal held that Explanation 3 could not operate independently. Consequently, denial of KKC credit solely on the strength of Explanation 3 was held to be legally unsustainable.

VAT Credit and Penalty

The Tribunal also set aside the denial of VAT credit, observing that no independent adverse findings had been recorded against it. Procedural objections regarding invoice addresses and maintenance of records were rejected as they had never been raised when the credit was originally availed under the erstwhile regime.

The penalty under Section 74 was likewise deleted since the entire transitional credit had been transparently disclosed through TRAN-1 and supported by detailed records. In the absence of fraud, suppression or wilful misstatement, invocation of Section 74 itself was unwarranted.

An Additional Jurisdictional Perspective

Apart from the Tribunal's reasoning, the decision also highlights a broader jurisdictional issue. Sections 73 and 74 empower the department to recover only "**input tax credit** wrongly availed or utilised." However, "input tax credit" is defined under Section 2(63) as the credit of "input tax", which Section 2(62) confines to taxes leviable under the GST regime.

In contrast, CENVAT, VAT and cess credits transitioned under Section 140 originate under the repealed Central Excise Act, Finance Act, 1994 and State VAT laws. Such credits do not become "input tax credit" merely because they are reflected in the electronic credit ledger.

Although the GSTAT did not expressly decide the appeal on this basis, its reasoning, read together with the Jharkhand High Court's decision in *Usha Martin Ltd.,(supra)* lends considerable support to this interpretation. If transitional credit itself falls outside the statutory definition of "input tax credit", the very jurisdiction to invoke Sections 73 or 74 becomes questionable. This provides taxpayers with an additional and independent jurisdictional ground in cases involving reassessment of undisputed transitional credits.

Implications for Taxpayers

The Tata Unistore ruling is a significant reaffirmation that the GST regime cannot be used as a mechanism to reopen settled issues under repealed tax laws. While Section 140 governs the transition of credit, it does not authorise GST authorities to reassess credits that had already accrued and remained undisputed under the erstwhile regime.

The decision provides a strong defence against attempts to invoke Sections 73 or 74 for reassessing transitional credit and reinforces the principle that any challenge to the admissibility of such credit must be pursued, if at all, under the repealed statutes. Businesses that reversed KKC credit under protest may also evaluate appropriate refund or other legal remedies, subject to the final outcome.

Interesting times ahead as GSTAT benches will start deciding on Transitional credits all over India.