IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75449 of 2025

(Arising out of Order-in-Appeal No. 206/SLG-ST/2024-24 dated 19.09.2024 passed by the Commissioner Appeal Commissionerate GST Bhawan, H.M. Road, Hakimpara, Siliguri-734001)

M/s. Patel Engineering Limited **: Appellant**
1ST Floor, C/o. Raj Kumar Agarwal,
Naxalbari Division, Dulaljote,
Panitanki New Market, Shyamdhan, Darjeeling-734429

VERSUS

The Commissioner of CGST & CX Siliguri Division **: Respondent**
35, Sara Bose Road, Hakimpara,
Siliguri-734001

APPEARANCE:

Shri Aditya Dutta, Advocate for the Appellant
Shri P. Das, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75853/ 2025

DATE OF HEARING / DECISION: 02.04.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Appeal No. 206/SLG-ST/2024-24 dated 19.09.2024 passed by the Commissioner (Appeals), Siliguri, wherein the Ld. Commissioner(Appeals) has upheld the demands of service tax along with interest and penalty confirmed in the Order-in-Original dated 31.10.2022.

2. The facts of the case are that M/s. Patel Engineering Limited (herein after referred as the

appellant) have been undertaking contracts for construction of various structures for private as well as government departments. They were duly registered with the service tax department under "Works Contract Service, Manpower Recruitment and Supply Agency Service and Other Taxable Services". They used to discharge their service tax liability as provider of service as well as recipient of service under RCM.

2.1. On the basis of audit observation under Spot Memo dated **09.08.2019,** a SCN dated **16.01.2020** was issued to the appellant seeking recovery of wrong availment and utilization of input service credit amounting to Rs. 30,18,941/- along with interest and penalty. After due process, the said notice was adjudicated which resulted in confirmation of demands of service tax along with interest and penalty in the impugned order.

3. The appellant submits that the lower authorities have confirmed the demands in the impugned order on the following grounds: -

(i) The appellant has taken input service credit under RCM of Rs. 30,18,941/- during June, 2017. The said amount of Rs. 30,18,941/- was deposited to the Government Exchequer under Challans dated 27.12.2017. The relevant ST-3 Return was also filed on 27.12.2017. The credit amount lying as on 30.06.2017 was transferred into the GST regime under Form TRAN-1.

(ii) As per Rule 3(4)(e) of CCR, 2004 'while paying service tax *the CENVAT credit shall be utilized only to the extent such credit is*

> *available on the last day of the month or quarter, as the case may be, for payment of tax relating to that month or quarter as the case may be*. In this case, the appellant had availed and utilized the said credits which were not available on June., 2017 violating the provision of the above rule.

3.1. The appellant submits that in June, 2017, when GST was introduced there were many issues related to availment of Cenvat credit. There was no clarity regarding availment of credit in respect of the services rendered and invoices issued prior to 1st July 2017 and payments made after 01.07.2017. In the present case, they have received the service and invoice prior to 01.07.2017, but payment of service tax was not made as on 01.07.2017, under reverse charge. To avoid any issue on the availment of credit later, they took the purported credit amount of Rs.30,18,941/- in their credit ledger in the month of June, 2017 but the said amount of Rs. 30,18,941/- was paid by them on 27.12.2017 to the Government Exchequer. Since the service was rendered and credit was taken prior to 01.07.2017, they have projected it in the Form TRAN-1 submitted on the very same date. Further the ST-3 Return for the period April. 2017 to June, 2017 showing the said amount of credit was also filed by them on 27.12.2017.

3.2. Thus, the crux of the dispute in the present case is that they had availed CENVAT Credit amount of Rs.30,18,941/- under RCM in June, 2017 prior to the date of the payment of the said amount to Government Exchequer and filing of the ST-3 on

27.12.2017. The Department has disallowed the said credit by means of the impugned order.

3.3. The appellant submits that the said issue has since been decided in favour of the appellant in the following cases:-

(a) *Ganges International Pvt. Ltd. v Assistant Commissioner of GST&C.Ex, Puducherry [2022(66) G.S.T.L. 186 (Mad)]*

In this case, the Hon’ble Madras High Court in a similar situation decided three writ petitions in favour of assesses and the availability of input tax credit has been discussed wherein it has been decided that the assesses therein *are eligible for taking credit and carrying forward the same in the electronic credit ledger of the GST regime*. In the said case all the three writ petitioners had taken credit prior to 30.06.2017 but paid the respective amounts to the Government Exchequer on 30.12.2017, 02.05.2018 and 14.12.2017 even when the date of filing TRAN-1 was extended upto 27.12.2017.

(b) *SRC Projects Pvt. Ltd. v AC, GST & CE, Salem [(2025) 26 Centax 93 (Mad)]*

In this case, the Hon'ble Madras High Court has passed the order in the favour of the petitioner to the effect that ‘*assessee could take recredit of amount of tax paid as recipient of royalty service from Government on reverse charge basis belatedly on 30-12-2017 as input tax credit in its electronic credit ledger*’.

3.4.. In view of the decisions rendered by the Hon’ble Madras High Court, the appellant submits that they are eligible for taking, utilizing and transferring the input tax credit of Rs. 30,18,941/- payment of which under RCM on 27.12.2017. Accordingly, the appellant prayed for setting aside the demands confirmed in the impugned order and allow their appeal.

4. The Ld. A.R. reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. I find that the appellant has availed CENVAT Credit amount of Rs.30,18,941/- under RCM in June, 2017 prior to the date of the payment of the said amount to Government Exchequer and filing of the ST-3 on 27.12.2017. I find that there is no dispute regarding the receipt of the service by the appellant and issue of the corresponding invoice for the same prior to 01.07.2017. Thus, I find that there is no dispute regarding the eligibility of the credit for the appellant. The ground under which the input service credit taken by the appellant under RCM basis during June, 2017 was that the said amount was deposited to the Government Exchequer under Challans dated 27.12.2017. I observe that there is no infirmity in availing the credit by the appellant when the eligibility of credit was not in dispute.

6.1. I observe that in June, 2017, when GST was introduced there were many issues related to availment of Cenvat credit. There was no clarity regarding availment of credit in respect of the services rendered and invoices issued prior to 1st July 2017 and payments made after 01.07.2017. In the present case, the appellant has received the service and invoice prior to 01.07.2017, but payment of service tax was not made as on 01.07.2017, under reverse charge. To avoid any issue on the availment of credit later, they took the purported credit amount of Rs.30,18,941/- in their credit ledger in the month of June, 2017. I observe that if the credit is not taken prior to 01.07.2017 and transferred through TRAN-1, the appellant would be eligible for refund of the said credit by cash as per the provisions of section 142(3) of the GST Act. I find that this view has been held by the Hon'ble Madras High Court in the case of *Ganges International Pvt. Ltd. v Assistant Commissioner of GST & C.Ex, Puducherry [2022(66) G.S.T.L. 186 (Mad)]. The relevant portion of the said decision is reproduced below:*

> ***"39.*** *Thus, the eligibility of the petitioners otherwise to claim the Cenvat credit under normal circumstances under the erstwhile law prior to 30-6-2017 is not in much dispute. However, it is the vehement contention on the part of the Revenue that, what are all the eligible credit for which, credit can be taken by the petitioners during the transitional period was taken by the petitioners as on 30-6-2017, thereafter the subsequent payment made shall not form part of the credit accrued on 30-6-2017. Therefore, the subsequent amount paid anything cannot be treated as an input tax credit for the purpose of making the claim in the transitional period even for carrying forward the same to the electronic credit ledger under GST regime.*
>
> ***40.*** *Insofar as the said objection of the Revenue is concerned, this Court feels that, insofar as these three cases are concerned, since the facts are very peculiar, where, the petitioners availed service prior to 1-4-2017, for which, the amount payable to them have been paid to the service provider, but the tax alone has not been paid i.e., service tax as well as the duty referred to above and this has been paid only after triggering the petitioners by the Revenue, but this payment has been made within the reasonable/permissible period. But,*

before making these payments since the transitional period has come into effect, the peculiar situation has arisen. Otherwise, had there been no GST regime from 1-7-2017, the petitioners otherwise would have been eligible to claim Cenvat credit of all these amounts paid, for which, the eligibility of the petitioners to claim the credit is not in much dispute.

41. *Merely because, the transitional provision has come into effect from 1-7-2017 and under Section 140(1) of the Act, the persons like the petitioners can make a claim only in respect of the credit which is already accrued as on 30-6-2017 and these credit had come into the account of the petitioners only subsequently, for which, claim under Section 140(1) could not have been made, the chance of making such an application to seek the refund or otherwise of such a credit which has subsequently accrued in the account of the petitioners, cannot be denied.*

42. *In that view of the matter, this Court feels that, in these kind of special situations, for which, the provision if not Section 142(3), no other eligible provision is available. Therefore, this Court feels that, since it is a dire necessity, as these kind of situation necessarily to be met with by the Legislation, for which, these transitional provision has been brought in in the Statute Book, there can be no impediment for invoking Section 142(3) of the Act by invoking the "Doctrine of Necessity".*

43. *Normally, the theory of "Doctrine of Necessity" could be invoked when there is a dire necessity with regard to the forum, before whom, the issue has to be referred to and disposed and decided by such forum. Earlier the view was that, it would apply only to judicial matters but in Mohapatra and Company and Another v. State of Orissa and Another - [1985] 1 SCR 322, it was held that "the doctrine of necessity applies not only to judicial matters but also to quasi-judicial and administrative matters".*

44. *The "Doctrine of Necessity" though would be applied only with regard to the forum or the authority by whom it shall be decided, here, since it is a transitional period from the erstwhile tax regime to the present GST regime, where, the* *available provisions are to be best utilised by the taxpayers, it become imperative in order to meet the special situation as the one discussed above, to have a forum, for which, the available legal provision of the Act viz., GST Act, 2017 can very well be invoked. The "Doctrine of Necessity" has been best explained in (1996) 4 SCC 104, Election Commission of India and Another v. Dr. Subramaniam Swamy and Another and also in (2006) 3 SCC 276 in State of U.P. v. Sheo Shanker Lal Srivastava and Others. In a Division Bench judgment of High Court of Delhi in the matter of Duncan Agro Industries Limited v. Union of India reported in 1988 (18) ECC 358 = 1989 (39) E.L.T. 211 (Del.), the [1985] 1 SCR 322, Mohapatra Company case has been followed.*

45. *Therefore, though normally the "Doctrine of Necessity" would only be invoked for want of forum, here in the case, it also can be construed that, if Section 142(3) is not permitted to be invoked in meeting situations like this, that situation would render that taxpayer remediless, hence, here also the "Doctrine of Necessity" can be invoked, in the considered opinion of this Court.*

46. *Since the language used in Section 142(3) of the Act is refund claim, the petitioner has made application for refund claim. However, under the erstwhile law, since the petitioners are not entitled to get any refund claim and their eligibility is confined only by taking the credit under Cenvat Credit Rules, beyond which, the relief cannot be stretched upon. Moreover, the Cenvat credit facilities which is a concession and if at all that concession has to be availed by the petitioners, that concession can be availed only in the manner known to law, for which, only credit facility can be adopted and therefore, the question of making any refund by way of cash as provided under Section 142(3) does not arise in this case, as, for which, the petitioners since have not been eligible or entitled to, that kind of claim cannot be made by the petitioners.*

47. *But at the same time, the petitioners application at least could have been considered by the respondents under Section 142(3) of the Act for the purpose of taking the credit and such credit could have been considered and allowed for* *carrying forward in the electronic credit ledger of the GST regime which is nothing but a different route than Section 140 and that is the only possibility for dealing with these kind of applications. Hence, this Court has no hesitation to hold that, the reasons stated by the respondents in these cases in passing the orders impugned to reject the claim made by the petitioners are not tenable or these reasons would not stand in the legal scrutiny, in view of the legal position which have been discussed herein above.*

48. *For all these reasons, this Court, having considered the peculiar facts and circumstances of the case, is inclined to dispose of these writ petitions with the following orders :*

"(i) That the impugned orders in these writ petitions are liable to be set aside, accordingly are set aside. As a sequel, the matters are remitted back to the respondents for reconsideration. While reconsidering the same, the authority concerned, who has to deal with the applications of the petitioners, shall consider and dispose of these applications under Section 142(3) of the CGST Act, 2017.

(ii) While reconsidering the said applications, the claim made by the petitioners need not be considered for the purpose of refund of the claim made by them. However, the said claim made by the petitioners can very well be considered for the purpose of permitting the petitioners to carry forward the accrued credit to the electronic credit ledger of the GST regime.

(iii) After considering the said applications, as indicated above, the necessary order shall be passed by the respondents within a period of six weeks from the date of receipt of a copy of this order. It is made clear that, before passing the orders as indicated above, an opportunity of being heard shall be given to the petitioners, so that the petitioners can put forth their case by providing all necessary inputs to the satisfaction of the authorities to take a decision thereon.

49. *With these directions, all these writ petitions are ordered accordingly. However, there shall be no order as to costs."*

6.2. I find that the same view has been held by the Hon'ble Madras High Court in the case of *SRC Projects Pvt. Ltd. v AC, GST & CE, Salem [(2025) 26 Centax 93 (Mad)]also.*

7. Thus, by relying on the decisions rendered by the Hon’ble Madras High Court cited supra, I hold that the appellant is eligible for taking, utilizing and transferring the input tax credit of Rs. 30,18,941/- payment of which under RCM was made on 27.12.2017.

8. Accordingly, I set aside the demands confirmed in the impugned order and allow the appeal filed by the appellant.

(Operative part of Order was pronounced in Open court)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP