

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Service Tax Appeal No. 86801 of 2021

(Arising out of Order-in-Appeal No. NSK-EXCUS-000-APPL-95-20-21 dated 29.01.2021 passed by the Commissioner of Central Excise and Goods & Service Tax (Appeals), Nashik)

Pride Ventures (I) Pvt. Ltd.

Appellant

101, 1st Floor, Sai Trade Centre,
Opp. Railway Station,
RTO Road, Aurangabad

Vs.

Commissioner of CE & GST, Aurangabad

Respondent

N-5, Town Centre, CIDCO, Aurangabad 431 030.

Appearance:

Shri Makarand P. Joshi, Advocate, for the Appellant

Shri Dhananjay Dahiwal, Deputy Commissioner, Authorised
Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 26.03.2025

Date of Decision: 21.04.2025

FINAL ORDER No. 85729/2025

Brief facts of the case are that the appellant is engaged in providing services. In terms of Rule 3(b) of Point of Taxation Rules, 2011, appellant was required to pay service tax on the advances received towards services to be provided in future. As on 30.06.2017, appellant had paid service tax amounting to Rs.6,15,409/- for services to be provided in future for which advances were received. As on 01.07.2017 the operation of Chapter V of Finance Act, 1994 came to an end and CGST Act, 2017 became operational. In terms of the provisions of clause (c) of sub-section (11) of Section 142 of CGST Act, 2017 where service tax was paid on the service and service was provided after 01.07.2017, then GST was to be paid on such service which became a component of supply and service provider was allowed to take credit of the service tax already paid before 01.07.2017 where service was not provided before 01.07.2017. Through Rule 118 of CGST Rules, it was provided that such credit shall be taken in the form of a declaration in Form GST TRAN-1. GST TRAN-1

was to be filed online. The provisions for taking such credit under sub-section (11) was provided at Sr.No.11 of Form GST TRAN-1. When the appellant tried to fill in the details of service tax of Rs.6,15,409/- paid before 30.06.2017, at Sr.No.11 of GST TRAN-1 on 20.08.2017 and again on 25.12.2017, there was technical glitch and the appellant could not fill in the said figure at Sr.No.11 of the said TRAN-1 but filled the same figure at Sr.No.5 of the said TRAN-1 which resulted that as if the appellant had transitional cenvat credit which was unutilized and transferred to TRAN-1. Therefore, a show cause notice dated 26.06.2019 was issued to the appellant denying cenvat credit of Rs.6,15,409/- on the ground that there was no separate document as required under Rule 9 of Cenvat Credit Rules, 2004 to avail the said cenvat credit of Rs.6,15,409/-. The original authority denied credit of Rs.6,15,409/- and imposed equal penalty. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals) who rejected the appeal through the impugned order-in-appeal. Aggrieved by the said order, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. He has submitted that in the initial days, GSTN portal was having several glitches and several assesses faced such difficulties and approached Hon'ble Supreme Court. Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd. & Ors. reported at 2022 (63) GSTL 162 (SC) has taken together several SLPs and passed order directing GSTN to open portal for filling concerned forms for availing transitional credit through TRAN-1 and TRAN-2 for two months effective from 01.09.2022 and also directed GSTN to ensure that there were no technical glitches during the said time. Learned counsel for the appellant has submitted that there is no doubt that there were technical glitches during the earlier periods of implementation of GST and the present appellant was one of the sufferers of such technical glitches and they could not fill the required particulars at Sr.No.11 of Form TRAN-1 and, therefore, Revenue has denied the said credit to the appellant. He has submitted that had the system been working properly, the appellant was eligible for entering into the figure of service tax already paid at Sr.No.11 of TRAN-1 and would have faced no difficulty of denial of the said credit through

the proceedings at lower level. He has submitted that the credit so attempted to be transferred was not on account of cenvat credit.

3. Heard the learned AR. Learned AR has submitted that the appellant has not produced any proof that they have attempted twice to fill in Sr.No.11 and could not do so by taking any screenshot etc.

4. I have carefully gone through the record of the case and submissions made. In accordance with the provisions of Rule 118 of CGST Rules and clause (c) of sub-section (11) of Section 142 of CGST Act, 2017, appellant was entitled to transitional credit of Rs.6,15,409/- by entering the same at Sr.No.11 of Form TRAN-1. Due to technical glitch, appellant had to enter the same at Sr.No.5 of the said form TRAN-1. The said violation of not entering the required data at Sr.No.11 but entering the same at Sr.No.5 is only procedural and for procedural infirmity, substantial right of the appellant cannot be denied. I, therefore, direct Revenue to treat the data entered at Sr.No.5 of form TRAN-1 of Rs.6,15,409/- to be treated as the one that is entered at Sr.No.11 of the said proforma.

5. In view of my findings and directions, I set aside the impugned order and allow the appeal.

(Pronounced in the court on 21.04.2025)

(Anil G. Shakkarwar)
Member (Technical)

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