

**Initiation of proceedings under GST for transition of CENVAT
Credit being inadmissible under existing law to be quashed: HC**

**Facts of the case - Usha Martin Ltd. v. Additional Commissioner,
Central GST and Excise - [2022] (Jharkhand)**

The proceedings were initiated against petitioner by issuance of show cause notice in Form GST-DRC-01 proposing recovery of transitioned CENVAT credit in terms of Section 73(1) of the CGST Act, 2017 along with interest and penalty. It filed writ petition and raised the question of lack of jurisdiction of the adjudicating authority to decide upon the availment of CENVAT credit by the petitioner.

It was contended that proceedings for wrongful availment of CENVAT Credit had been initiated by revenue under Section 73 (1) of CGST Act instead of relevant provisions of Finance Act read with Rule 14 of Cenvat Credit Rules 2004 and disallowed CENVAT credit carried forward by petitioner by filing TRAN-1.

Decision of the case:

- i. The Honorable High Court noted that as per Section 73 of CGST Act, 2017, the proceeding can be initiated for non-payment of any tax or short payments or for erroneous refund or for wrongfully availing or utilizing input tax credit which are available under CGST Act. However, Section 73 does not speak of CENVAT Credit as CGST Act does not provide for CENVAT Credit rather term has been subsumed in expression input tax credit both relating to supply of good or services. The assumption of jurisdiction to determine whether CENVAT Credit was admissible under existing law by invoking provisions of Section 73 of CGST Act was not proper in the eyes of law.
- ii. Therefore, the Court held that the initiation of proceedings under Section 73 (1) of CGST Act, 2017 against petitioner for transition of CENVAT Credit as being inadmissible under existing law was beyond jurisdiction.