



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 440/2020

M/s. Shree Motors, (Proprietor Pradeep Choudhary) Having Principal Place Of Business At 170, Rajiv Nagar, Basni, Jodhpur (Rajasthan) - 342004.

-----Petitioner

Versus

Union Of India, Ministry Of Finance (Department Of Revenue), Room No. 46, North Block, New Delhi-110001 Through Joint Director (Revenue).

2. The Goods And Service Tax Council (Gst Council), Office Of The Gst Council Secretariat, 5Th Floor, Tower-Ii, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi-110001 Through Its Secretary.

3. Goods And Service Tax Network (Gstn), Through Its Ceo, East Wing, Woldmark 1, 4Th Floor, Tower B, Aerocity, New Delhi-110037.

4. Central Board Of Indirector Taxes And Customs, Through Its Chairman, Department Of Revenue, North Block, New Delhi-110001.

5. Assistant Commissioner, Office Of Central Goods And Service Tax, Jodhpur, Rajasthan.

-----Respondents

Connected With

S.B. Civil Writ Petition No. 266/2020

Gaurav Industries, A Proprietorship Concern, Having Place Of Business At Industrial Estate, Shivaji Marg, Falna - 306116. Through Its Proprietor R.k. Jain S/o Milap Chandji Jain, Aged 56 Years, R/o Nehru Colony, Falna Dist. Pali (Raj.) - 306304.

-----Petitioner

Versus

1. Gst Council Secretariat, 5Th Floor, Tower Ii, Jeevan Bharti Building Janpath Road, Connaught Place, New Delhi.

2. Commissioner, Cgst Commissionerate, Jodhpur, G-105, Late No.5, New Jodhpur Industrial Area, Jodhpur-342003.

3. Assistant Commissioner, Cgst Division-D, Range Pali, Ground Floor, Tdm Office Campus, Bsnl, Mahavir Nagar,



Pali - 306401.

----Respondents

For Petitioner(s) : Mr. Sharad Kothari
Mr. Prateek Gattani
For Respondent(s) : Mr. Rajvendra Saraswat

HON'BLE MR. JUSTICE ARUN BHANSALI**Judgment****18/03/2020**

These writ petitions have been filed by the petitioners aggrieved by non filing of Form GST Tran-1 at common portal allegedly because of various system error/technical glitches at the portal throughout the period during which the Form was available, which resulted in denial of transactional credit of central excise paid on goods amounting to Rs. 23,27,063/- in S.B.C.W.P. No. 440/2020 and Rs. 85,41,755/- in S.B.C.W.P. No. 266/2020 as on the appointed date i.e. 01.07.2017 in terms of Section 140 of the Central Goods and Service Tax Act, 2017 ('CGST Act').

It is, inter alia, indicated in the writ petitions that petitioners had purchased goods prior to the appointed date i.e. 01.07.2017, which were held in stock on the appointed date. The provisions of Chapter-XX of the CGST Act provided for transitional provisions for transition of credit from erstwhile indirect tax regime to GST regime, which inter alia provided that a registered person who was not liable to be registered under the provisions of the Central Excise Act, 1944 ('the Act of 1944') is entitled to take credit of eligible duties in respect of input held in stock on the appointed day subject to fulfillment of the conditions set out therein. It is submitted that the provision of Section 140 of the CGST Act is a



complete Code in itself and the same does not provide for eligibility subject to any further conditions.

Rule 117 of the Central Goods and Service Tax Rules, 2017 ('CGST Rules') was framed for allowing carry forward of the eligible duties available with the assessee on the day immediately preceding 01.07.2017, which inter alia, imposed time limit of 90 days (further extended by 90 days) for taking credit of eligible duties in electronic credit ledger.

It is alleged that due to various technical glitches/system error the petitioners have failed to file Form GST Tran-1 at common portal within the time envisaged under Rule 117 of the CGST Rules. After attempting help at the GST network portal, the petitioners approached the department for manually accepting the Form GST Tran-1 and made several attempts in this regard. However, the same were not responded.

The petitioner M/s. Shree Motors assailed validity of Rule 117 of the CGST Rules by filing S.B.C.W.P. No. 4315/2019, however, the same was declared intra vires by this Court and the issue raised pertaining to technical glitches was referred to Single Judge for adjudication.

The writ petition came to be decided by learned Single Judge by order dated 21.11.2019 (Annexure-13), wherein, following the judgment in the case of *Jodhpur Truck Pvt. Ltd. V. Union of India & Ors. : S.B.C.W.P. No. 15221/2019*, decided on 01.11.2019, the petition was disposed of, wherein the petitioner was directed to file detailed representation to GST Council in terms of Rule 117(1A) of the CGST Rules and the GST Council was directed to dispose of the representation in a time bound manner with a speaking order.



In S.B.C.W.P. No. 266/2020 also, a similar direction was issued on 21.11.2019.

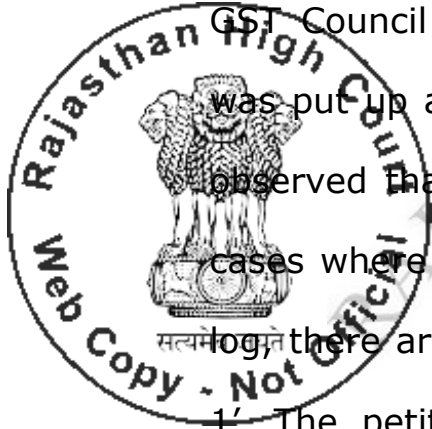
Pursuant to the directions dated 21.11.2019 the petitioners filed their representation to the GST Council with a prayer to allow online filing of Form GST Tran-1, however, the representation filed by the petitioner in S.B.C.W.P. No. 440/2010 was decided by the

GST Council (Annexure-15) with the observations that the case was put up at the ITGRC meeting held on 02.12.2019 and it was observed that petitioner's case falls under the category 'B-1' i.e. cases where the tax payer received the error 'As per GST system log, there are no evidence of error or submissions/filing of TRAN-1'. The petitioner was further directed that the credit of GST TRAN-1 taken by the petitioner on the basis of interim order be reversed with applicable interest.

Similarly in S.B.C.W.P. No. 266/2020 identical communication (Annexure-10) was sent and alongwith letters copies of the communication received from the Joint Secretary, GST Council were annexed.

It is, inter alia, submitted by counsel for the petitioners that the action of the respondents in denying the credit to the petitioners, entitlement whereof is not in dispute, only on account of the fact that due to technical glitches the petitioners could not file the requisite Form GST Tran-1 in the window provided by the Rule 117 of the CGST Rules, is not justified.

It was submitted that the respondents without taking into consideration the submissions made in this regard as well as various judgments of various High Courts directing grant of credit, have rejected the representation made by the petitioners,





pursuant to the directions given by this Court that also based on the determination made prior to the order passed by this Court.

Further submissions were made that the petitioners have vested right to seek credit once the duties for taxes have been paid by the petitioners. The procedure providing for limitation despite the fault/defect on part of the department to make available requisite system for taking the credit, the action in denying the credit cannot be sustained.

Submissions were also made that various Courts have granted the requisite relief irrespective of non-availability of any technical log on 'GSTN system'. Submissions were made that the status of the departmental portal was such that despite attempts made in this regard no log in happened and, consequently for lack of technical log, the petitioners could not have been denied the credit, to which they were otherwise entitled.

Reliance was placed on *Triveni Needles Pvt. Ltd. v. Union of India & Ors. : W.P.(C) 11105/2019*, decided on 17.12.2019 by Delhi High Court, *The Tyre Plaza v. Union of India & Ors. : W.P.(C) 8970/2019*, decided on 20.08.2019 by Delhi High Court, *Blue Bird Pure Pvt. Ltd. v. Union of India & Ors. : (2019) 68 GSTR 340*, *Asiad Paints Limited & Ors. V. Union of India & Ors. : W.P. No. 33290/2019*, decided on 19.11.2019 by Karnataka High Court, *Jay Bee Industries v. Union of India & Ors. : CWP No. 2169/2018*, decided on 16.11.2019 by Himachal Pradesh High Court & *Adfert Technologies Pvt. Ltd. v. Union of India & Ors. : CWP No. 30949/2018*, decided on 04.11.2019 by Punjab & Haryana High Court.

After the order was reserved, counsel for the petitioners has submitted a note indicating that the special leave petition against



the order in the case of Adfert Technologies Pvt. Ltd. (supra) has been rejected by Hon'ble Supreme Court on 28.02.2020. It was prayed that the writ petitions be allowed and the communications issued requiring the petitioners to reverse the credit be quashed and set aside.

Learned counsel appearing for the respondents made submissions that the writ petitions filed by the petitioners have no substance. Submissions were made that procedure have been provided in law for taking the benefit of available credit by way of provisions of Section 140 of the CGST Act and Rule 117 of the CGST Rules. However, a limitation in this regard has been provided and the petitioners were, therefore, required to follow the limitation in claiming the credit. However, within the limitation prescribed the needful was not done and, therefore, the petitioners are not entitled to any relief.

Further submissions were made that once the respondents after going through the log came to the conclusion that there was no evidence of error or submission/filing of Form GST Tran-1 by the petitioners, the petitioners on account of alleged vested right cannot seek the relaxation in the limitation and reopening of the portal for the purpose. सत्यमेव जयते

Further submissions were made that the allegations made about the technical glitches and that the assesses were generally denied the credit on account of such glitches is baseless as huge number of Form GST Tran-1 were filed and credit was given.

Submissions were made that no vested right has been taken away, only a time limit has been fixed and, therefore, the various pleas raised in this regard cannot be sustained.



Reliance was placed on judgment in *Osram Surya (P) Ltd. v. Commr Central Excise, Indore : 2002 (9) SCC 20, JCB India Ltd. v. Union of India : Case No. 3142/2017*, decided on 20.03.2018 by Bombay High Court, *ALD Automotive Pvt. Ltd. v. Commercial Tax Officer & Ors. : AIR 2018 SC 5235, Willowood Chemicals Pvt. Ltd. v. Union of India : Special Civil Application No. 4252/2018*,

decided on 19.09.2018, wherein, the constitutional validity of second proviso to Section 140(1) of the CGST Act and Rule 117 of the CGST Rules has been upheld. It was prayed that the writ petitions be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

As noticed hereinbefore, the petitioners in the earlier round of litigation initially challenged the validity of provisions of Section 140 of the CGST Act and Rule 117 of the CGST Rules, however, in view of the fact that validity was upheld, the matter was transmitted to the Single Judge.

By order dated 21.11.2019 the writ petitions filed by the petitioners were disposed of by the learned Single Judge relying on order in the case of *Jodhpur Truck Pvt. Ltd. (supra)*, with the following directions:-

“In view of the above, the present writ petition is disposed of in terms of the judgment rendered by this Court in the case of *Jodhpur Truck Pvt. Ltd. (supra)* and following directions are issued:

1. The respondents shall permit the petitioner to submit online GST TRAN-1 form, subject to furnishing a proof that he had tried to upload GST TRAN-1 form prior to 27.12.2017 and such attempt failed due to technical fault/glitch on the common portal. Needless to mention that petitioner will be required to submit a certificate/recommendation issued by GST Council in this regard.
2. In case all the three requirements enumerated in para no.12 of the judgment of *Jodhpur Truck Pvt. Ltd.*



(supra) are met/satisfied, the petitioner's online GST TRAN-1 form shall be accepted, of course, if it is filed by 31.12.2019 or extended period (if any).

3. For the purpose aforesaid, the petitioner may submit an application before the GST Council to issue the requisite certificate/recommendation, alongwith requisite particulars, evidence and a certified copy of the order instant, within a period of 15 days from today. If the petitioner's assertion is found correct, the GST Council shall issue the recommendation/certificate to the petitioner within a period of three weeks from placement of such application and certified copy of this order.

4. In case the GST Council is of the view that petitioner is not entitled for certificate/recommendation, they shall pass an order giving brief reasons and communicate the same to the petitioner – assessee.

Needless to observe that the petitioner shall be free to take appropriate remedy against such order."



A perusal of the above directions would reveal that the Court permitted the petitioners to submit online Form GST Tran-1 subject to furnishing a proof that they had tried to upload Form GST Tran-1 prior to 27.12.2017 and such attempt failed due to technical glitches on the common portal. Further the petitioners were required to submit a certificate/recommendation issued by GST Council in this regard and with reference to para 12 of the judgment in the case of Jodhpur Truck Pvt. Ltd. (supra), the form was ordered to be accepted and the GST Council was required to issue their requisite certificate within a period of 15 days if the petitioners' assertion was found correct and in case the petitioners were not entitled for the requisite, the Council was required to pass an order giving reasons.

The above directions are explicit, wherein, on a representation made by the petitioners the GST Council was required to issue requisite certificate/recommendation in terms of



para 12 of the judgment in the case of Jodhpur Truck Pvt. Ltd. (supra).

Para 12 of the judgment in the case of Jodhpur Truck Pvt. Ltd. (supra) reads as under:-

"12. A bare look at the above-quoted provisions leaves no room for ambiguity that an assessee can be permitted to furnish offline GST TRAN-1 form subject to fulfilling all the three conditions, mentioned hereinfra :

- (i) the assessee failed to upload his GST TRAN-1 form on account of technical glitches on the common portal; and
- (ii) such attempt was made during the currency of transitional period i.e., 22.12.2017.
- (iii) the GST Council has made a recommendation for such extension, being satisfied about such failure."



A perusal of the representations made by the petitioners (Annexure-14 in S.B.C.W.P. No. 440/2020 and Annexure-9 in S.B.C.W.P. NO. 266/2020) would reveal that except for claiming the credit, the petitioners did not indicate any material to show that the petitioners had failed to upload their Form GST Tran-1 on account of technical glitches on the common portal and such an attempt was made during the currency of the transitional period as required by the judgment in the case of Jodhpur Truck Pvt. Ltd. (supra).

The GST Council dealt with the cases of the petitioners alongwith some other similarly situated petitioners and came to the following conclusion:-

"2. ITGRC is Committee constituted by GST Council to deal with such issues and in this regard on verification of the minutes of the ITGRC up to 9th meeting following has been noticed with regard to said Writ Petitions:-

Sr.No.	Writ Petition No.	Filed by	Remarks
4.	4752/2019	M/s Gaurav Industries	B-1 Category, 3 rd ITGRC meeting held on



			26.10.2018
7.	4315/2019	M/s Shree Motors	B-1 Category, 9 th ITGRC meeting held on 02.12.2019

3. In view of above position it is clear that 9 cases (Sr. No.1, 4, 5, 6, 7, 9, 10, 13, 14) were placed through GSTN as per CBIC Circular dated 03.04.2018 before ITGRC and remaining 5 cases (Sr. No. 2, 3, 8, 11, 12) are not placed before the ITGRC till 9th ITGRC.

4. Out of above 9 cases presented by GSTN only one case (Sr. No. 14) was categorised under category A by GSTN which means error was faced by taxpayer while filing TRAN-1 on GST Portal. Other 8 cases were placed in category B by GSTN on the basis of systems log as no error was faced by the taxpayer while filing TRAN-1. Therefore, ITGRC has recommended only one case (Sr. No. 14) to reopen the portal and in remaining 08 cases not allowed to re-open the GST Portal. In case any new facts has emerged in view of Para 2 above, in these cases, the same may be brought to the notice of this office.

5. Further, your attention is drawn towards Commissioner (Legal) letter dated 13.11.2018 and 01.08.2019 for further needful action in such cases. You may consider filing an appeal in terms of CBIC (Legal) letter F. No. 276/187/2018-CX. 8A Part dated 20.11.2018. In case any new facts has emerged in view of Para 2 above, in these cases, the same may be brought to the notice of this office.

6. This issues with the approval of Competent Authority.

Yours Faithfully,

sd/-

(Dheeraj Rastogi)
Joint Secretary,
GST Council"

Encl : as above

A perusal of the above communication dated 12.12.2019

reveals that the GST Council referred to the ITGRC meeting, wherein, cases of the petitioners were considered and indicated that their cases fell in B-1 category and B-1 category has been described as 'as per GST system log, there are no evidences of error or submission/filing of Tran-1'.

It appears that as regard the status of filing/submission of Form GST Tran-1 on part of the petitioners is concerned, it had already been considered by the ITGRC meeting held on



26.10.2018 in the case of S.B.C.W.P. No. 226/2020 and the said aspect was not brought to the notice of the Court while passing the order dated 21.11.2019 requiring making of the representation and its consideration by GST Council, however, in the case of petitioner in S.B.C.W.P. No. 440/2020 has been considered after passing of the order.

In view of the fact that this Court while deciding the writ petitions filed by the petitioners had laid down the specific parameters for grant of relief to the petitioners and it has been found by the respondents as a fact that there was no evidences of error or submission/filing of Form GST Tran-1 by the petitioners, the petitioners apparently are bound by the said outcome and, as such, are not entitled to any relief.

So far as the submissions made pertaining to the vested right and the fact that as the petitioners have admittedly paid the taxes and are, therefore, entitled for the relief, suffice it to notice that the petitioners had questioned the validity of provisions of Section 140 of the CGST Act and Rule 117 of the CGST Rules in the earlier writ petition, which plea was negated.

The theory of vested rights and the implication of limitation on the said aspect of vested right has been considered by Hon'ble Supreme Court in the case of *Osram Surya (P) Ltd. (supra)*, wherein, while considering the proviso II to Rule 57G of the Act of 1944 it was laid down that by providing limitation the statute has not taken away any of the vested rights, which accrue to the manufacturers and what is restricted is the time, within which, the manufacturer has to enforce that right and, therefore, once the



provisions of Rule 117 of the CGST Rules, which prescribe limitation has been upheld, the plea raised pertaining to the denial of vested right on account of petitioners failing to submit/file Form GST Tran-1 in time cannot be countenanced.

In the judgments of various High Courts cited by learned counsel for the petitioners, in none of the cases the petitioners therein were given specific directions to place material with regard to the technical glitches and attempt on their part to file/submit the Form by the High Court in petitions filed by them and finding of fact had been recorded pertaining to failure on part of the petitioners therein to file/submit Form GST Tran-1 by the GST Council.

In view thereof, the directions given in the judgments relied on by leaned counsel for the petitioners cannot come to the rescue of the petitioners now, once under the directions of this Court a finding with regard to the same has come on record.

In view of the above discussion, no case for interference as sought by the petitioners is made out in the present writ petitions. The petitions are accordingly dismissed.

No order as to costs.

(ARUN BHANSALI),J

AK Chouhan/-