IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5946 OF 2018

Kanakia Hotels & Resorts Pvt. Ltd. .. Petitioner

v/s.

The Union of India & Ors. ..Respondents

Mr. Tarun Gulati a/w Mr. Vinayak Mathur I/b PDS Legal for the petitioner
Mr. M. Dwivedi a/w Mr. J.B. Mishra for the respondents

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA, J.J.

DATED : 21st SEPTEMBER, 2018.

P.C.

1. This petition under Article 226 of the Constitution of India seeks a direction to respondents in particular respondent no.5 i.e. the Chairman, Goods and Services Tax Network, Ministry of Finance to enable online submission of the declaration under Form GST TRAN-1 so as to enable the petitioner to claim input tax credit of Cenvat credit under the Goods & Services Tax Act, 2017 (GST Act).

2. It is the petitioner's case that inspite of its best efforts, the Form GST TRAN-1 for availing transitional credit under the GST Act, was not accepted online. This due to no fault of the petitioner but only due to

technical problems in the running of the system of respondent no.5.

3. Mr. Dwivedi and Mr. Mishra, learned Counsel appearing for respondent no.5 tender a copy of the communication received by Mr. Mishra from respondent no.5 to the following effect :-

> *"This is in reference to Writ Petition (St.) NO.12151 of 2018 before Bombay High Court in respect of GST matters filed by M/s. Kanakia Hotels & Resorts. The issue of the petitioner was discussed in the 1st IT Grievance Redressal Committee (ITGRC) held on 22.06.2018. The ITGRC committee had approved filing of TRAN-1 by the petitioner. ITGRC referred the matter to the Law Committee to examine the consequential actions required to be taken and the mechanism for implementation of such actions (this is in accordance with Clause 7 of the Circular dated 3.4.2018). The matter was deliberated in the Law Committee and after the approval of the competent authority, CBIC has now issued Notification No.48/2018 dated 10.09.2018 (copy attached) wherein Rule 117(1A) has been inserted. This rule provides for the following :-*
> *"(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond 31st March, 2019, in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension."*
> *Further, in sub-rule (4), in clause (b), in sub-clause (iii), the following proviso has been inserted, "Provided that the registered persons filing the declaration in FORM GST TRAN-1 in accordance with sub-rule (1A), may submit the statement in FORM GST TRAN-2 by 30th April, 2019." Therefore, the petitioner will be allowed to file form GST TRAN-2 as well.*
> *As the Notification has been issued, GSTN will now enable filing of TRAN 1 on the common portal for the petitioner and other registered persons in respect of whom extension has been*

allowed. In this regard, communication will be sent to the petitioner shortly on the steps to be followed to file TRAN 1.

In view of the above, the issue of the petitioner stands resolved."

This is taken on record and marked "A" for identification.

4. In view of the above, Mr. Gulati, learned Counsel appearing for the petitioner seeks withdraw this petition. This with liberty to file a fresh petition in case the issues are not resolved by the respondents.

5. Liberty as prayed for is granted.

6. Petition is dismissed as withdrawn with the above liberty.

(RIYAZ I. CHAGLA, J.) **(M.S. SANKLECHA, J.)**