

Item no.36 to 56

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

M.A.T. 552 of 2020

+

IA No.CAN 1 of 2020

IA No.CAN 2 of 2020

**Nodal Officer, Jt. Commissioner, IT Grievance, GST
Bhawan**

Vs.

M/s. Das Auto Centre

With

M.A.T 677 of 2020

+

IA No.CAN 1 of 2020

**Commissioner, CGST & CX, Howrah Commissionerate
Vs.**

Joydev Ghosh & Ors.

With

M.A.T. 566 of 2020

+

I.A. No. CAN 1 of 2020

I.A. No. CAN 2 of 2020

**Nodal Officer, Joint Commissioner, IT Grievance
GST Bhawan**

Vs.

M/s. Rudra Autoparts Distributor & Ors.

With

M.A.T. 567 of 2020

+

I.A. No. CAN 1 of 2020

I.A. No. CAN 2 of 2020

**Principal Commissioner of GST, Kolkata North
Commissionerate, Range IV**

Vs.

Ms/ Excel Composites Pvt. Ltd. & Ors.

With

M.A.T. 528 of 2020

+

I.A. No. CAN 1 of 2020 (Old CAN 5765 of 2020)

I.A. No. CAN 2 of 2020 (Old CAN 5769 of 2020)

Nodal Officer, GST IT Glitches

**(IT Grievance Cell), Kolkata North Commissonerate,
GST Bhawan
Vs.
Sony Hydraulics Pvt. Ltd. & Ors.**

With

**M.A.T. 531 of 2020
With
I.A. No. CAN 1 of 2020 (Old CAN 5822 of 2020)
With
I.A. No. CAN 2 of 2020 (Old CAN 5824 of 2020)**

**Commissioner of CGST & Central Tax
Vs.
M/s. Rishi Graphics Pvt. Ltd. & Ors.
With**

**M.A.T. 534 of 2020
With
I.A. No. CAN 1 of 2020 (Old CAN 5829 of 2020)
With
I.A. No. CAN 2 of 2020 (Old CAN 5832 of 2020)**

**The Commissioner of CGST, West Bengal
CGST & CX Bidhannagar Division
Kolkata
Vs.
M/s. Vertiv Engergy Pvt. Ltd. & Ors.**

With

**M.A.T. 535 of 2020
With
I.A. No. CAN 1 of 2020 (Old CAN 5837 of 2020)
With
I.A. No. CAN 2 of 2020 (Old CAN 5840 of 2020)
Commissioner of CGST
Vs.
Heera Metals Pvt. Ltd. & Ors.**

With

**M.A.T. 543 of 2020
With
I.A. No. CAN 1 of 2020
With
I.A. No. CAN 2 of 2020
Union of India
Vs.
OSL Prestige Pvt. Ltd. & Ors.**

With

**M.A.T. 544 of 2020
With
I.A. No. CAN 1 of 2020
With
I.A. No. CAN 2 of 2020**

**Deputy Commissioner (Technical),
Chowringhee Division, Range-V
Vs.
M/s. Chandras Chemical Enterprises Pvt.
Ltd & Ors.**

With

**M.A.T. 546 of 2020
With
I.A. No. CAN 1 of 2020
With
I.A. No. CAN 2 of 2020**

**Commissioner of CGST and
Central Tax
Vs.
M/s. Print Sales Company & Ors.**

With

**M.A.T. 549 of 2020
With
I.A. No. CAN 1 of 2020
With
I.A. No. CAN 2 of 2020**

**Nodal Officer, Joint Commissioner
IT Grievance, GST Bhawan
Vs.
Sanajy Kr. Karn & ors.**

With

**M.A.T. 550 of 2020
With
I.A. No. CAN 1 of 2020
With
I.A. No. CAN 2 of 2020**

**Union of India
Vs.
Shri Amitava Biswas & ors.**

With

**M.A.T. 551 of 2020
With
I.A. No. CAN 1 of 2020
With
I.A. No. CAN 2 of 2020**

**Union of India
Vs.
M/s. Ray Indra Chandra & ors.**

with

M.A.T. 558 of 2020
With
I.A. No. CAN 1 of 2020
I.A. No. CAN 2 of 2020

Principal Commissioner,
Central Goods and Services Tax and
Central Excise , Kolkata North Commissionerate, GST
Bhawan
Vs.
M/s. Hazemag India Pvt. Ltd. & Ors.

With

M.A.T. 568 of 2020
+
I.A. No. CAN 1 of 2020
I.A. No. CAN 2 of 2020
The Union of India
Vs.
Amit Tibrewal & ors.

With

M.A.T. 573 of 2020
+
I.A. No. CAN 1 of 2020
I.A. No. CAN 2 of 2020
Nodal Officer, Joint Commissioner,
CGST, GST Bhawan
Vs.
Sumita Ghosh & ors.

with

M.A.T. 575 of 2020
+
I.A. No. CAN 1 of 2020
I.A. No. CAN 2 of 2020
Union of India
Vs.
M/s. Krishna Hi-tech Infrastructure Pvt. Ltd. & ors.

With

M.A.T. 576 of 2020
+
I.A. No. CAN 1 of 2020
I.A. No. CAN 2 of 2020
Union of India
Vs.
M/s. Rene Impex Pvt. Ltd. & ors.

With

M.A.T. 526 of 2020
+
I.A. No. CAN 1 of 2020 (Old CAN 5758 of 2020)
I.A. No. CAN 2 of 2020 (Old CAN 5760 of 2020)

Commissioner, CGST
Vs.
Indo East Corporation Pvt. Ltd. & Ors.

With

M.A.T. 578 of 2020
+
I.A. No. CAN 1 of 2020
I.A. No. CAN 2 of 2020
I.A. No. CAN 3 of 2020
Union of India
Vs.
Mrinal Ghosh & ors.

For the Appellants :
(in all appeals)

Mr. K. K. Maiti,
Mr. Bhaskar Prasad Banerjee
Ms. Sanjukta Gupta

For the Respondents :

Mr. Y.J. Dastoor, Ld. ASG
Ms. Madhu Jana
Mr. Partha Ghosh
Mr. S.K. Tiwari

... for UOI

Mr. Vinay Kumar Shraff,
Mr. Himangshu Kr. Ray,
Ms. Priya Sarah Paul
(in **MAT 552/2020, MAT 566/2020, MAT 544/2020, MAT 549/2020**)

Mr. Arijit Chakraborty,
Mr. Nilotpall Chowdhury,
Mr. Prabir Bera
(in **MAT 550/20, MAT 551/20, MAT 558/20, MAT 568/20, MAT 575/20 and MAT 576/20**)

Mr. Debanuj Basu Thakur,
Mr. Bhaskar Bhattacharya
(in **MAT 526/2020**)

Mr. Rahul Tangri,
Ms. Udit Saraf
(in **MAT 528/2020**)

Mr. U. Ganguly,
Mr. Rahul Tangri,
Ms. Udit Saraf
(in **MAT 534/2020**)

Mr. Saurabh Bagaria
Mr. Indranil Banerjee

Mr. Anindya Seal

(in **MAT 578/2020**)

Mr. A. Roy, Ld. G.P.

Mr. T.M. Siddiqui

Mr. S. Mukherjee

Mr. D. Ghosh

Mr. N. Chatterjee

... For State

Heard on : 14.12.2021

Judgment on : 14.12.2021.

T.S. Sivagnanam J.:

These appeals by the Central Government are directed against a common order passed by the learned Single Judge in a bunch of writ petitions filed by the respondents praying for allowing them to file/upload GST TRAN-1 or to permit them to file revised TRAN-1 form. The learned Single Judge by the impugned order directed the GSTN Authorities, who manage to open the portal for the writ petitioners till March 31, 2020. This direction was issued to enable each of the writ petitioners to comply with whatever they had to do with their returns.

In the bunch of writ petitions the facts may be slightly different in the sense that each of the writ petition may have a peculiar problem but the common feature in all the writ petitions is that on account of a technical glitch or on account of the assesses not being felt sensitized with the system or on account of other connectivity issues or when the assesses/dealers are located in remote corners of the State Form TRAN-1 could not be uploaded in time or in appropriate form. The other common but most important feature in all these cases is the entitlement of the writ petitioners to the input credit has crystallized. This crystallized right, which ripened into the vested right, is now being denied to the writ petitioners on account of procedural problem. In this factual background, we require

to examine as to whether the order or direction passed by the learned Single Judge was appropriate or otherwise.

We have heard elaborately all the parties. We have perused the various case laws placed before us. We find that in majority of the High Courts similar relief was sought for and invariably in all those cases appropriate directions have been issued in favour of the writ petitioners. This would go to say that the problem is not confined to a particular State or a few States but appears to be a pan-India problem.

Be that as it may, we would wish to point out from the recent decision of the High Court of Madras in the case of **Commissioner of GST and Central Excise vs. Bharat Electronic Ltd.** in **WA No. 2203 of 2021** it is seen that an identical issue was considered by the Division Bench of the Court and the appeal filed by the Department of Revenue was dismissed. The Court while dismissing the appeal concurred with the learned Single Judge and directed the authorities to facilitate the writ petitioners to file a revise Form TRAN-1. The Court took into consideration the decision of Hon'ble Supreme Court in the case of **Commissioner of Customs vs. Dilipkumar and Co.** reported in **(2018) 9 SCC 1** wherein the *doctrine* of substantial compliance was held to be applicable even while considering a claim of exemption and the above doctrine would afortiori apply to a claim of Input Tax Credit. The Court noted it in paragraph 51 of the judgment of the Hon'ble Supreme Court. Further, the Court also took into consideration the decision of the High Court of Bombay in the case of **Heritage Lifestyles and Developers Pvt. Ltd. vs. Union of India** reported in **2020 SCC 43 GSTL 33 (Bombay)**. The Court after taking note of the decision rendered by other Hon'ble High Courts had dismissed the appeal filed by the State and directed the revenue to enable the writ petitioners to file revise Form TRAN-1 by opening the portal within the time frame. Further time was granted to examine the legality or correctness or

otherwise of the claim of Input Tax Credit under the erstwhile regime and transition to GST of the revenue.

The other recent decision is that of the High Court of Allahabad in the case of **Ratek Pheon Friction Technologies Pvt. Ltd. vs. Principal Commissioner** reported in **(2021) 130 Taxmen.com 367**. In a batch of writ petitions filed before the High Court of Allahabad the writ petitioners sought for issuance of mandamus to command the authorities to allow them to submit revise/ re-revise electronically, their respective declarations on Form GST TRAN-1 and TRAN-2 in the GST portal under the provisions of Central Goods Services Tax Act, 2017 and Uttar Pradesh Goods and Services Tax Act, 2017. The Division Bench after elaborately considering the factual matrix, notifications/circulars issued by the CBIC, noted that the CBEC itself recognized existence of technical difficulties in working of the GST portal for a long period of time and that too immediately upon introduction of GST regime. The Court noted the decision of the High Court of Delhi in **Blue Bird Pure Pvt. Ltd. vs. Union of India** reported in **(2019) 108 Taxman.com 218 (Del)** in WP(C) 3798 of 2019 which relied upon the earlier decision in **Bhargava Motors vs. Union of India** in **WPC No. 7423 of 2019** dated 12.07.2019 and the decision of the High Court of the Madras and The decision of the Punjab and Haryana High court in **Adfert Technologies (P) Ltd. vs. Union of India** reported in **(2020) 32 GSTL 726 (Punj.and Har.)** and granted relief in favour of the writ petitioners. In fact, several directions have been issued by the Court and the authorities are to comply with such directions. The decision in the case of **Adfert Technologies Pvt. Ltd. (Supra)** rendered by the High Court of Punjab and Haryana was challenged by the Union of India before the Hon'ble Supreme Court and the Special Leave Petition was dismissed.

Thus, we are fully convinced that the decision which were rendered above have clearly brought out the difficulties faced by the assesses and

also as to how the assessee having substantially complied with the requirement under law and having been entitled to credit on account of transition to the GST regime which is beyond the purview of the assessee and the assessee cannot be put to prejudice on account of technicalities. Thus, keeping the underlying principle in mind if the matter is examined then we are inclined to lean in favour of the writ petitioners and affirm the directions issued by the learned Single Judge. We note from the directions issued by the learned Single Judge that the authorities have been directed to open the portal so that the assessee may be able to file their respective TRAN-1 return or revise return or re-revise return. In our considered view, this would be a difficult exercise and such cannot be run by the assessing Officer in whose jurisdiction the assessee is carrying business. It probably will have to be done at the very higher level and consequently direction, if any, issued to open the portal, would become unworkable qua prayer made by the writ petitioners. While pondering on the face of the issue, we refer the decision of the Punjab and Haryana High Court in the case of **Hans Raj Sons vs. Union of India** reported in **2020 (34) GSTL 58 (P & H)**. In the said decision the Court while allowing the writ petition had granted two options one by directing opening of the portal and in case of non-opening of portal the writ petitioner/assessee will be entitled to make unutilized credit in their GST 3B forms to be filed on the monthly basis. This in our considered view, will be a workable solution and the Assessing Officer will be entitled to examine the legality of the claim on such form being filed by the assessee.

Thus, for the above reasons, we find that the substantial part of the order and the directions issued by the learned writ Court as well as reasoning given merits acceptance. However, we are of view that instead of directing the portal to be open, the direction issued in **Hans Raj Sons (supra)** is more assessee friendly. We also find identical directions have

been issued in the case of **Amba Industrial Corporation vs. Union of India** reported in **(2020) 117 Taxman. Com 195 (P & H)**.

For the above reasons, the miscellaneous appeals and the connected applications are dismissed and the order and directions issued by the learned Single Judge is slightly modified by granting liberty to the writ petitioner/assessee to file individual tax credit in GSTR-3B Forms for the month of January 2022 to be filed in the month of February, 2022 and the concerned authority/Assessing Officer would be at liberty to verify the genuineness of the claim.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)