

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPT No. 129 of 2021**

1. M/s Nagorao Auto Engineering Works Telghani Naka Raipur Through Smt. Kanta Devi Nagpure Legal Heir And Wife Of Late Sukund Rao Nagpure (Proprietor).

---- Petitioner

Versus

1. Union Of India Through Deptt. Of Central Revenue, Its Principal Director General Of Central Tax At North Block New Delhi.
2. The Chairman G.S.T. Council Govt. Of India, Tower - II, 5th Floor, Jeevan Bharti Building New Delhi 110001.
3. The Central Board Of Excise And Customs Department Of Revenue Ministry Of Finance, North Block, New Delhi.
4. State Of Chhattisgarh Through Its Principal Secretary, Mantralaya, Mahanadi Bhavan, Naya Raipur, Chhattisgarh.
5. The Commissioner Of State Tax Chhattisgarh, Mahanadi Bhavan Sector - 19, Atal Nagar, Naya Raipur Chhattisgarh.

----Respondents

For Petitioner	:	Shri Mool Chand Jain, Advocate
For State	:	Ms. Hamida Siddiqui, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****02.12.2021**

1. The present writ petition has been filed aggrieved of the inaction on the part of the respondents in permitting the petitioner to submit the TRAN-1 Form under GST Act claiming for the input tax credit.
2. The brief facts relevant for the disposal of the present writ petition is that petitioner is a Trader registered under the G.S.T. Act dealing in two and three wheeler spare parts holding GSTIN-**22ABHPN8512G1ZU**.

By way of the introduction of the new GST regime w.e.f. 01.07.2017, the registered members under the GST Law in order to avail the benefit of input tax credit, were required to submit their GST TRAN-1 Form within a specific cut off date which was initially 21.09.2017 and which was subsequently extended up-till 15.11.2017 and thereafter again upto 27.12.2017. The proprietor of the petitioner-establishment however expired on 20.09.2017 and because of the said compelling circumstances, the TRAN-1 Form could not be submitted within the period provided under the statute and even under the extended period up-till 27.12.2017 which was extended by the GST Council.

3. The legal heirs of the proprietor thereafter took charge of the business and thereafter they tried to submit the TRAN-1 Form. However because of the Technical difficulties and Glitches that occurred, the Form could not be uploaded. The GST Council thereafter again vide notification dated 10.09.2018 extended the last date of submitting of TRAN-1 Form for the year 2017 up-till 31.03.2019. The petitioner again made an attempt on 12.11.2018, however again because of Technical difficulties, the TRAN-1 Form could not be uploaded. Immediate thereafter, the petitioner is said to have made a representation to the Commissioner in this regard seeking permission to submit the TRAN-1 Form by opening of the Portal or permitting them to submit manually. The said representation of the petitioner was undecided for a pretty long time which compelled the petitioner to file the present writ petition on 04.02.2021 seeking for an appropriate direction to the respondents to make suitable arrangement in filing the TRAN-1 Form online or to

accept it manually so as to enable the petitioner to claim the input tax credit on goods held in stock as on 30.06.2017.

4. Counsel for the petitioner submitted that the petitioner did make her attempt in ensuring that the TRAN -1 form is uploaded through online mode but because of the inexperience on the part of the legal heirs of the original proprietor as also on the part of the personnel handling the accounting of the petitioner-establishment, the same could not be uploaded because of the technical reasons. That the petitioner never tried to avoid the submission of the said details but was ever willing to do so but for the technical glitches that occurred, the same could not be uploaded. That the reasons for not uploading were beyond the control of the petitioner and the petitioner cannot be attributed for the said lapse and prayed for a chance to upload the same afresh, either by opening of the portal by the respondents or permitting them to submit the same manually.
5. Counsel for the respondent/State however submitted that pending the petition before this Court, now that the respondents have passed the order dated 16.08.2021 declining the request of the petitioner. The petitioner would now have to file a fresh writ petition altogether challenging the order dated 16.08.2021 and the present writ petition in its present form would not be sustainable. It was also the contention of counsel for respondents/State that even otherwise the present writ petition at this juncture in its present form would not be sustainable for the reason that the petitioner has not challenged the provision of the GST Act Rule 117 of the GST Rules which prescribes a fix date by

which time the TRAN-1 Form has to be submitted. That in the absence of challenge to the Rule, the decision taken by the respondents cannot be found fault with as it would be purely in accordance with law. It was lastly contended by the State counsel that the entire perusal of the pleadings would show that there is no detail available on record to show that the actual dates on which the petitioner made attempt to submit the TRAN-1 Form and there is also no evidence in-respect-of there being any technical glitch which prevented the petitioner from uploading the TRAN-1 form and in the absence of any such details available, the claim of the petitioner again at this belated stage cannot be entertained.

6. The issue of registered members who could not submit the GST TRAN-1 by the last date prescribed under the statute i.e. 27.12.2017 as extended by the GST Council, came up for consideration before every High Courts. Some of the recent decisions rendered in this regard is that of the Division Bench of the Kerala High Court in the case of **Union of India & Ors. Vs. Merchem India Pvt. Ltd.**, (2021)67 TLD 420, dealing with a similar situation in paragraphs 8 to 11 have held as under:-

8. It is significant to note that the statute does not provide for any provision for lapsing of unutilized input tax credit for non filing of TRAN-1. The input tax credit is required by law to be credited to the electronic credit ledger of an assessee. Failure to credit the input tax credit is an infraction of section 140(1) and to Rule 117(3) of the GST Rules. Input tax credit is an asset in the hands of the dealer. A registered dealer had a statutory right under the VAT regime to get refund. Unutilized input tax credit of the erstwhile regime can be denied from being credited to the electronic credit ledger only under the contingencies mentioned in the proviso to section 140(1). On all other situations, this statutory right cannot be

defeated by any procedural rules under the GST regime. In this context, we bear in mind the salutary principles enshrined in Article 265 and Article 300A of the Constitution of India also.

9. It is axiomatic that computer literacy has not reached its pinnacle in our country. Technical glitches at the transition stage to GST should not affect above said statutory right of dealers. Attempt must always be made not to deprive a dealer from a bonafide claim, through technicalities. In the wake of the transition period to GST and the switching over to the electronic portal, admittedly glitches had occurred. In such instances, the department should have, while assisting the assessee, acted with alacrity and promptness rather than deny bonafide claims.
10. The issue raised in this writ appeal being technical in nature, it is only in the interest of all that such technical issues do not stand in the way of rendering justice. Keeping in perspective the contentions in the case, we are of the view that the impugned judgment does not reflect any error of law warranting an interference by this Court in appeal. In fact, the impugned judgment of the learned Single Judge being an innocuous one, we are constrained to observe that the respondents ought not to have pursued the same in appeal, wasting judicial time and energy.

7. The High Court of Punjab & Haryana in *Adfert Technologies Pvt. Ltd.*

v. Union of India and others (2020) 64 TLD 277 (P&H) (2019 SCC

Online P&H 5701) held as under:-

“14.....Various reasons assigned by Petitioners seem to be plausible and we find ourselves in consonance with the argument of Petitioners that unutilized credit arising on account of duty/tax paid under erstwhile Acts is vested right which cannot be taken away on procedural or technical grounds. The Petitioners who were registered under Central Excise Act or VAT Act must be filing their returns and it is one of the requirements of Section 140 of CGST Act, 2017 to carry forward unutilized credit. The Respondent authorities were having complete record of already registered persons and at present they are free to verify fact and figures of any Petitioner thus inspite of being aware of complete facts and figures, the Respondent cannot deprive Petitioners from their valuable right of credit.

15. During the course of arguments, counsel for the Petitioners submitted various judgments and we find that a Division Bench of Gujrat High Court in the case of *Siddharth Enterprises v. The Nodal Officer* 2019 TIOL 2068 has dealt with issue involved at length. It has been held that denial of credit of tax/duty paid under existing Acts would amount to violation of Article 14 and 300A of Constitution of India. Unutilized credit has been recognized as vested right and property in terms of Article 300A of the Constitution of India. We deem it appropriate to reproduce relevant extracts as below:

“33. In our opinion, it is arbitrary, irrational and unreasonable to discriminate in terms of the time-limit to allow the availment of the input tax credit with respect to the purchase of goods and services made in the pre-GST regime and post-GST regime and, therefore, it is violative of Article 14 of the Constitution.

34. Section 16 of the CGST Act allows the entitlement to take input tax credit in respect of the post-GST purchase of goods or services within return to be filed under Section 39 for the month of September following the end of financial year to such purchase or furnishing of the relevant annual return, whichever is earlier. Whereas, Rule 117 allows time-limit only up to 27th December 2017 to claim transitional credit on pre-GST purchases. Therefore, it is arbitrary and unreasonable to discriminate in terms of the time-limit to allow the availment of the input tax credit with respect to the purchase of goods and services made in pre-GST regime and post-GST regime. This discrimination does not have any rationale and, therefore, it is violative of Article 14 of the Constitution.

38. By not allowing the right to carry forward the CENVAT credit for not being able to file the form GST Tran-1 within the due date may severely dent the writ-applicants working capital and may diminish their ability to continue with the business. Such action violates the mandates of Article 19(1)(g) of the Constitution of India.”

8. Following the said judgment of the Punjab and Haryana High Court in the case of Adfert Technologies (Supra), the Punjab and Haryana High Court again in the case of ***C.P. Marble v. Union of India & Anr.*** (2021) 40 GSTJ in Paragraph 07 has held as under:-

7. The Petitioner has challenged vires of Rule 117 (1A) of Rules, however we do not think it appropriate to declare it invalid as we are of the considered opinion that Petitioner is entitled to carry forward VAT Credit/ITC accrued under Punjab Value Added Tax Act, 2005. The Respondents have repeatedly extended date to file TRAN-I where there was technical glitch as per their understanding. Repeated extensions of last date to file TRAN-I in case of technical glitches as understood by Respondent vindicate claim of the Petitioner that denial of unutilized credit to those dealers who are unable to furnish evidence of attempt to upload TRAN-I would amount to violation of Article 14 as well Article 300A of the Constitution of India.

9. The similar issue again came up for hearing before the Odisha High Court in the case of ***Sunny Motors v. Central Board of Indirect Taxes and Customs & Ors.***, wherein again referring to the decision of the Delhi High Court in the case of ***Adfert Technologies*** (supra) in paragraphs 10 to 11 have held as under:-

10. It is seen that the near identical circumstances the Delhi High Court by the judgment dated 21st November, 2019 in W.P. (C) No.1329 of 2019 (Aagman Services Private Limited v. Union of India) permitted the Petitioner in that case to submit his TRAN-1 form either electronically or manually. In that case too, the Petitioner's case was considered in the meeting of the GST Council. The Delhi High Court relied on an earlier decision dated 29th July, 2019 in W.P.(C) No.13772 of 2018 (M/s. Blue Bird Pure Pvt. Ltd. v. Union of India 2019 SCC Online 9250 and allowed the petition. Against the above decision of the Delhi High Court in Aagman Services Private Limited (supra) a Nodal Officer, Delhi State GST Department filed Special Leave Petition (Civil) Diary No.22386 of 2020 which was dismissed by the Supreme Court on 7th January, 2021 both on the ground of delay as well on merits. A copy of the said order is placed before the Court.

10. Earlier thereto on 4th November, 2019 the High Court of Punjab and Haryana delivered a judgment of Adfert Technologies Pvt. Ltd. v. Union of India and others, (2020) 73 GSTR 267 holding the similar reasons adopted and adduced by the Petitioner by that day for not filing the TRAN- 1 Form. It was observed by Punjab & Haryana High Court particularly in note of sub-rule 1A of Rule 117 of the GST Rules that permitted the Commissioner to extend the date of submitting the declaration electronically on account of technical difficulties on the common portal and in respect of whom the council has made a recommendation for such extension. Punjab & Haryana High Court likewise directed the Opposite Parties to permit the Petitioner to file or revise where already filed incorrect TRAN-1 either electronically or manually on or before 30th November, 2019 granting liberty to the Opposite Parties to verify the genuineness of claim of the Petitioner adding that "no body shall be denied to carry forward legitimate claim of ITC on the ground of non-filing of TRAN-1 by 27th December, 2017." This judgment was upheld by the Supreme Court of India while dismissing the SLP (C) No.4408 of 2020 (Union of India and others v. Adfert Technologies Pvt. Ltd.) on 28th February, 2020. With the aforementioned both the judgments - one delivered by High Court of Delhi and other by High Court of Punjab and Haryana and upheld by the Supreme Court, this Court feels no reason in the present case to similar by the Punjab and Haryana High Court should not be granted.

11. Accordingly, in the present case a direction is issued to the Opposite Parties to either open the portal and permit the Petitioner to file TRAN-1 form electronically on or before 1st November, 2021 or accept the

TRAN-1 Form from the Petitioner manually before that date. It will be open to the authorities to verify the genuineness of the claim of the Petitioner in accordance with law and pass appropriate orders.

10. Very recently again a bunch of writ petitions of similar nature came up for hearing before the Division Bench of the Allahabad High Court, the leading case of which was M/s ***Ratek Pheon Friction Technologies Pvt. Ltd. v. Principal Commissioner & Ors*** in Writ Tax No. 477 of 2021 along with other connected writ petitions, wherein again taking into consideration the entire factual backdrop of the statute, the object, intention and the purpose and the right of the registered members from Paragraph 58 to 67 and again from paragraph 72 to 75 have held as under:-

58. Undisputedly, existence of various opinions of different High Courts referred above are also clear evidence of the difficulty faced by the “registered persons”/taxpayers, pan-India. Also, those decisions are evidence of that difficulty faced over a long duration of time, stretching into the period when the pandemic COVID-19 spread all over the country, beginning from 2019 (Blue Bird Pure Pvt. Ltd. case) to 2021 (R R Distributor case).

59. Looking at the institution date of the present batch of writ petitions, we find, these have been instituted from the year 2018 to 2021. It corresponds to the period when similar petitions were filed and were decided in favour of other “registered persons”/taxpayers, by other High Courts, allowing them margin of time to submit/revise electronically, Form GST TRAN-1 and/or TRAN-2.

60. Therefore, without referring to the individual difficulties cited by the petitioners in the present batch of petitions, we are of the opinion, the difficulties claimed were generic as had been recognized by the CBIC itself vide his circular dated 03.04.2018 as also by various decisions of the other High Courts. Those difficulties and obstacles were suffered over a very long duration. It therefore necessarily emerges that the petitioners/“registered persons” were unreasonably obstructed on account of technical glitches and errors on the GST Portal during the

limited time they were required to submit/revise electronically, Form GST TRAN-1/TRAN-2 electronically.

61. They were obstructed, and remained disabled (generally) owing, not to any conduct attributable to them but owing solely to factors beyond their control and for reasons attributable to the respondents. Consequently, it would be arbitrary, to enforce strict timeline prescribed under the Act and the Rules framed thereunder, against them.
62. Rule of law and good administration go hand in hand. It is true, no ITC may arise under the GST regime unless a “registered person” fulfills the conditions therefor, so also, the administration of tax law that is in the hands of the GST Council, GST Commissioner (Central), GST Commissioner (UP), GST Network and all other State or statutory authorities, must allow all “registered persons”/taxpayers, reasonable opportunity to exercise their rights and make their claims, in the manner contemplated by law.
63. Though unintentional on part of the State authorities, it cannot be lost sight that the obstruction thus caused was attributable only to the conduct of the State authorities since, the GST Portal is a creation of the State authorities and the responsibility to run the same seamlessly, rests exclusively on them. The “registered persons”/taxpayers, whose rights were adversely impacted by the lack of smooth operation of the GST Portal, could not be saddled with any civil consequences arising from the non-functioning or improper or irregular functioning of the GST Portal.
64. Once the CBIC clearly recognized the existence of such technical glitches on the GST Portal, we fail to understand why and on what reasonable basis the CBIC and the revenue authorities insisted for specific evidence and verification as a condition to grant relaxation of timeline - to submit/revise/re-revise Form GST TRAN-1/TRAN-2. The “registered persons”/taxpayers have been saddled with the burden to produce evidence of individual difficulty faced. In absence of existence of any statutory requirement (at the relevant time), that burden would now involve recalling from memory, the number of attempts made and the time and date when such attempt was made - to retrieve electronic trail of that event.
65. In absence of any enabling law, that burden cast on the “registered persons”/tax payers - to lead evidence of difficulty faced, is wholly arbitrary and unreasonable and therefore unenforceable. The injury caused being attributable to the State authorities, even if unintentional,

the “registered persons”/taxpayers cannot be burdened today, to bring home evidence to establish the extent of the injury caused that too with respect to transition provision newly introduced, especially when the injury sprung from a generic event/cause.

66. It is also a common fact, not all “registered persons”/taxpayers would submit electronically, Form GST TRAN-1/TRAN-2, themselves. Often, professionals are hired to make such compliances. A single tax practitioner or Chartered Accountant may be engaged by numerous “registered persons”/taxpayers to submit electronically, their respective Form GST TRAN-1/TRAN-2. Once such professional would try to submit such Form electronically, on behalf of one taxpayer and fail, as part of the prudent behaviour, he may be expected to make no further attempts on behalf of each of the other “registered person”/taxpayer, at the same time, though he may have been similarly engaged by others as well.
67. At the relevant time, there was no requirement in law and even today, there is no requirement either under the Act or the Rules, to obtain evidence of every attempt made to submit Form GST TRAN-1 or TRAN-2. It is only by way of the Circular instruction dated 3.4.2018 that such a requirement was introduced by the revenue authorities. It is arbitrary and therefore unenforceable.
72. Thus, we have no hesitation in observing that a reasonable opportunity ought to have been granted to all “registered persons”/taxpayers to submit/revise/re-revise electronically their Form GST TRAN-1/TRAN-2.
73. For the reasons given above, we allow all the writ petitions with the following directions:
 - (i) All petitioners before this Court may first file physical Form GST TRAN-1/TRAN-2 before their respective jurisdictional authority, within a period of four weeks from today.
 - (ii) That jurisdictional authority shall then make a report in writing on the same, as to compliances contemplated under Section 140 of the CGST Act and Rule 117 of the CGST Rules.
 - (iii) In case, no objection be taken, a report to submit/revise/re-revise the Form GST TRAN-1/TRAN-2 electronically, would be made by the concerned jurisdictional authority, within a period of two weeks.
 - (iv) In the event of any objection arising, one limited opportunity may be given to that petitioner to correct or revise or re-revise the physical Form

GST TRAN-1/TRAN-2. That exercise may be completed within a period of three weeks and the report be submitted accordingly

(v) Upon completion of that exercise, the jurisdictional authority shall forward his report along with said physical GST TRAN-1/TRAN-2 to the GST Network, within a further period of one week, with a copy of that communication to the petitioner concerned, through Email or other approved mode. No form submitted in compliance of this order would be rejected/declined as filed outside time.

(vi) The GST Network shall thereupon either itself upload the GST TRAN-1/TRAN-2, within two weeks of receipt of such communication or allow that petitioner opportunity to upload those details, within a reasonable time.

74. We make it clear, the above exercise would be a one-time affair and any details thus submitted would not remain open to any further or other revision by the petitioners/"registered persons".

75. Since, we have noted the general difficulty obtaining with all the "registered persons"/taxpayers and have considered the same to be generic in nature, we also make this order applicable to all other "registered persons"/taxpayers within the State of U.P. (who are not before this Court), subject to the modification that such non-petitioners/"registered persons" may approach their jurisdictional authority, as above, within a period of eight weeks from today. The further timelines provided by this Court shall stand modified accordingly.

11. Given the authoritative decision rendered by the various High Courts in the country and also taking note of the fact that the husband of the petitioner who was the original proprietor having expired in the midst of introduction of the new GST regime on 20.09.2017 and the then compelling circumstances, and further because of the technical glitches and difficulties which the petitioner faced in the course of submission of TRAN-1 form, this Court also endorses the view taken by the various High Courts mentioned above. Accordingly, this Court is inclined to allow the writ petition in similar terms as decided by the various High Courts. As a consequence, this Court directs the respondents to permit

the petitioner either submit the TRAN-1 Form online by opening of the portal or permit to submit the TRAN- 1 Form manually and thereafter to process the assessee's claim for grant of the input tax credit at the earliest. Let this exercise be completed by the respondents within a period of 60 days from the date of receipt of copy of this order.

12. The writ petition accordingly stands allowed and disposed of.

**Sd/-
P. Sam Koshy
Judge**