

Item No. 19

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 12.07.2022

DELIVERED ON: 12.07.2022

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA 738 of 2021

**Siliguri Auto Works Private Limited
VERSUS
The Goods and Services Tax Council & Ors.**

Appearance:-

**Mr. Boudhayan Bhattacharyya,
Ms. Sretapa Sinha,
Mr. Sougata Banerjee**

.....for the Petitioner

**Mr. Subir Kumar Saha, Ld. A.G.P.,
Mr. Bikramaditya Ghosh**

.. for the State.

Mr. Ratan Banik

... for the respondent nos.3 to 5.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. Affidavit-of-service filed in Court today be taken on record.

2. The petitioner has prayed for issuance of a writ of mandamus to command the authorities to allow rectification of

the GST TRAN 1 either through portal or manually for the purpose of claiming transitional credit under Section 140 read with Rule 117 of the Central Goods and Services Tax Act, 2017 (for short, "CGST Act").

3. The petitioner claims to be engaged in the business of selling and reselling two wheelers and three wheelers and also spare parts of Bajaj Auto. The petitioner claims that the petitioner has an excess input tax credit to the tune of Rs.61,98,787/- as on June 30, 2017. He claims that due to lack of awareness of the procedures, technical glitches and also the complex procedure, the petitioner though correctly uploaded the GSTR 1 form in time but could not put the digital signature thereon. Accordingly, the petitioner was not allowed to utilise the said input tax credit. It is the further case of the petitioner that pursuant to an order passed by this Court on January 29, 2019 in W.P. No.1842(W) of 2019, the petitioner submitted a representation before the concerned authority in terms of the direction passed by this Court but the grievance of the petitioner has not been redressed which compelled the petitioner to approach this Court by filing this writ petition.

4. Mr. Bhattacharya, learned Advocate appearing for the petitioner submits that the issue whether under such circumstances the assessee can be allowed to utilise the Input Tax Credit has already been decided by the Hon'ble Division Bench of this Court thereby permitting the assessee to file individual tax credit in GSTR - 3B forms. He relies upon a decision of the Hon'ble Division Bench of the High Court at Calcutta in a batch of appeals being **MAT 552 of 2020 with I.A. CAN 1 of 2020 and I.A. CAN 2 of 2020 (Nodal officer, Jt. Commissioner, IT Grievance, GST Bhawan Vs. M/s. Das Auto Centre).**

5. Mr. Saha, learned Additional Government Pleader duly assisted by Mr. Ghosh, learned Advocate, appears for the State and does not dispute the aforesaid submissions of the learned Advocate of the petitioner. Mr. Saha, in his usual fairness, submits that this Court has also passed an order in **WPA No.1497 of 2022 (Sevoke Motors - Vs. - State of West Bengal & Ors.)** relying on the aforesaid Division Bench decision.

6. Mr. Banik, learned Advocate appears for the respondent nos.3, 4 and 5.

7. Heard the learned Advocates for the parties and considered the materials on record.

8. A registered person is entitled to carry forward tax credit as provided under Section 140 of the CGST Act read with Rule 117 of the CGST Rules. However, the claim of the petitioner, that he is eligible for input tax credit is subject to verification by the Assessing Officer.

9. The principal grievance of the petitioner is that his entitlement to input tax credit is being denied on technical ground for not putting the digital signature in the uploaded GSTR TRAN 1 form. It is well settled that entitlement of the petitioner to the input tax credit is a vested right and the same cannot be denied on account of procedural problem.

10. This Court after taking into consideration the judgment dated December 14, 20-21 in the Case of M/s. Das Auto Centre (supra) delivered a judgment on July 7, 2022 in Sevoke Motors (supra) wherein it was held as follows:-

“After going through the materials on record this Court finds that the issue raised in this writ petition is squarely covered by the judgment dated December 14, 2021 passed in the case of M/s. Das Auto Centre (supra). In the said decision the Hon’ble Division Bench after taking into consideration the decision of various High Courts as well as the decision of Hon’ble Supreme Court held as follows.

*“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 8 also as to how the assesses 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.”*

11. This Court accordingly holds that the issue involved in the instant writ petition is squarely covered by the decision in the case of M/s. Das Auto Centre (supra) and Sevoke Motors (supra).

12. Therefore, this Court is of the considered view that liberty is to be granted to the petitioner /assessee to file individual tax credit in GSTR - 3B form. If such form is filed in terms of this order, the authorities shall act on the GSTR-3B form filed pursuant to this order.

13. Accordingly, WPA 738 of 2021 stands allowed by giving liberty to the writ petitioner / assessee to file individual tax credit in GSTR - 3B forms for the month of August, 2022 to be filed in the month of September, 2022 and the concerned authority / Assessing Officer would be at liberty to verify the genuineness of the claim of the petitioner and pass orders accordingly.

14. There shall be no order as to costs.

15. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

Naren, AR(Ct.)