

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 986 OF 2019

Siemens Ltd.

...Petitioner

Versus

Union Of India Through The Jt. Secretary (revenue)

And Ors.

...Respondent

**WITH
WRIT PETITION NO.2008 OF 2024
WITH
WRIT PETITION NO. 9715 OF 2022
WITH
WRIT PETITION NO. 8388 OF 2019
WITH
WRIT PETITION NO. 9640 OF 2019
WITH
WRIT PETITION NO. 11539 OF 2019
WITH
WRIT PETITION NO.16759 OF 2023
WITH
WRIT PETITION NO.16760 OF 2023
AND
WRIT PETITION NO.16762 OF 2023**

Mr. Vikram Nankani, Sr. Advocate aw Mr. Chirag Shetty aw Mr. Jitendra Motwani aw Mr. Sameer Samal i/b Economic Laws Practice for Petitioner in WP/986/2019

Mr. Prasad Paranjape aw Mr. Sanjeev Nair aw Mr. Kevin Gogri aw Mr Kumar Harshvardhan i/b Lumiere Law Partners for Petitioner in WP/9715/2022, WP/16759/2023, WP/16760/2023, WP/16762/2023

Mr. Prakash Shah aw Mr Mohit rawal aw Mr. Mihir Mehta i/b PDS Legal for Petitioner in WP/11539/2019

Mr. Sriram Sridharan aw Mr Dev Shanmuga for Petitioner in WP /8388/2019, WP/9640/2019

Mr. N. Venkatraman, ASG a/w Mr. Jitendra B. Mishra a/w Ms. Sangeeta Yadav aw Mr. Rupesh Dubey aw Mr. Umesh Gupta for Respondent UOI in WP/986/2019

Mr Jitendra B. Mishra aw Ms. Sangeeta Yadav for Respondent in WP/11539/2019, WP/2008/2024

Mr. Jitendra B. Mishra aw Ms. Maya Majumdar for Respondent No.5 in WP/9715/2022

Mr. Vijay H. Kantharia a/w Mr. Ram Ochani for Respondent Nos.1 to 3 in WP/8388/2019 & for Respondent No.6 in WP/9640/2019

Mr. Ram Ochani for Respondent Nos.4 & 5 in WP/11539/2019

Ms. Shruti D. Vyas, Addl. G.P. aw Ms. Pratibha J. Gavhane, AGP for the State

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 109 OF 2020

Unichem Laboratories Limited	..	Petitioner
v/s.		
Union of India & Others	..	Respondents

WITH
WRIT PETITION NO. 2168 OF 2021
WITH
WRIT PETITION NO. 437 OF 2020
WITH
WRIT PETITION NO. 5397 OF 2024
WITH
WRIT PETITION NO. 1646 OF 2022
WITH
WRIT PETITION NO. 1479 OF 2019
WITH
WRIT PETITION NO. 2786 OF 2021
WITH
WRIT PETITION NO. 2781 OF 2023 (E - Filed)
WITH
WRIT PETITION NO. 14481 OF 2023 (E - Filed)
WITH
WRIT PETITION NO. 262 OF 2019

Mr. Jitendra Motwani, a/w Mr. Nishant Shah, Mr. Chirag Shetty Mr. Niraj Hande, Ms. Disha Shah i/b Economic Laws Practice for Petitioner in WP/2786/2021.

Mr. Jitendra Motwani a/w Mr. Chirag Shetty i/b Economic Laws Practice for Petitioner in WP/2168/2021.

Mr. Jitendra Motwani a/w Mr. Chirag Shetty, Mr. Sameer Samal i/b Economic Laws Practice for Petitioner in WP/262/2019.

Mr. Rohan P. Shah a/w Mr. Udayan Choksi, Mr. Sri Sabari Rajan, Mr. Marmik Kamdar, Mr. Mohammed Anajwalla and Ms. Surabhi Prabhudesai i/b Khaitan

& Co. for Petitioner in WP/1479/2019.

Mr. Prasad Paranjape a/w Mr. Sanjeev Nair, Mr. Kumar Harshvardhan, Mr. Kevin Gogri, i/b Lumiere Law Partners for Petitioner in WPL/14481/2023 and WP/2781/2023 WP/1646/2022.

Mr. Nand Kishore a/w Ms. Ritika Aroro i/b M/S. S L Partners for Petitioner in WP/437/2020.

Ms. Ashwini Chandrasekaran a/w Ms. Priyank Rathi , Mr. Prasad Avhad i/b Mr. Kuldeep U. Nikam for Petitioner in WPL/5397/2024.

Ms. Jyoti Chavan, Addl. G. P. for Respondent-State in WP/2786/2021 and WP/2781/2023.

Mr. Himanshu Takke, AGP for Respondent-State in WP/262/2019.

Ms. P. S. Cardozo for Respondent in WP/1479/2019.

Mr. Jitendra B. Mishra a/w Mr. Dhananjay Deshmukh, Ms. Sangeeta Yadav, for CGST in WP/109/2020 and WP/1646/2022.

Mr. Jitendra B. Mishra a/w Ms. Sangeeta Yadav for Respondent in WP/109/2020 and WPL/5397/2024.

Mr. Karan Adik for Respondent in WP/2786/2021.

Mr. J. B. Mishra a/w Mr. Ram Ochani for R. No. 1 – 3 in WP/2168/2021.

Mr. Dhanesh Shah for Res., UOI in WP/1479/2019.

Mr. Venkatramani, ASG, a/w Mr. J. B. Mishra, Mr. Siddharth Chandrashekhar for Respondent No. 2 To 5 in WP/437/2020.

Ms. Kavita Shukla i/b Neeti Punde for R. No. 2 and 3 in WPL/14481/2023.

Mr. Karan Adik a/w Ms. Maya Majumdar for Respondents in WP/262/2019.

**CORAM: G. S. KULKARNI &
 FIRDOSH P. POONIWALLA, JJ.**
DATED: 29th FEBRUARY, 2024

P.C.

1. The petitioners in this batch of petitions are registered as Input Service Distributors. They raise an issue in regard to the transition of the Input Tax Credit available with them on the appointed day (1 July 2017), that is, when the Central Goods and Services Tax Act, 2017 was brought into force.
2. The petitioners contend that such input tax credit was not permitted to be transitioned and / or to be taken in the electronic credit ledger, although it

was statutorily entitled to them, and merely, because there is a defective electronic mechanism to give effect to such input tax credit. Accordingly, the present Petitions were filed praying for reliefs inter alia for a writ of mandamus directing the Respondents to permit the Petitioners to allow eligible transition and credit as per Section 140 of the CGST Act, without any restrictions.

3. We had commenced the hearing of the present proceedings in pursuance of the orders dated 24th March 2023 passed by the Supreme Court in the case of **Union of India and Ors. Vs. Siemens Ltd. And Ors.**¹ remanding these proceedings for a fresh consideration and a judgment to be delivered on merits, after reflecting on all contentions and the relevant provisions of law.

4. We have heard extensive arguments as advanced by learned Senior Counsel for the Petitioners and Mr. N. Venkatraman, learned Additional Solicitor General.

5. The primary issue which falls for consideration for the Court is the legal effect sub-section (1) and sub-section (7) of Section 140 of the CGST Act, would bring about on the transitional arrangements for carry forward and utilization of the input tax credit, at the hands of the Petitioners-Input Service Distributors. Sub-sections (1) and (7) of Section 140 are required to be noted,

1 SLP (Civil) dairy No. 7213/2023

which read thus:-

Section-140 Transitional arrangements for input tax credit.-

“(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit (of eligible duties) carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law (within such time and) in such manner as may be prescribed: Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:

(i) where the said amount of credit is not admissible as input tax credit under this Act; or

(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

(2).....

(3).....

(4).....

(5).....

(6).....

(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as (credit under this Act, within such time and in such manner as may be prescribed) even if the invoices relating to such services are received on or after the appointed day.”

(Emphasis supplied)

6. According to the Petitioners, on the appointed day, their right and entitlement for the input tax credit to be transitioned under the GST regime in their capacity as Input Service Distributors, is clearly recognized under sub-section (7) of Section 140 of the CGST Act.

7. Mr. Venkatraman, learned ASG has made elaborate submissions on what can be the cumulative effect of sub-section (1) and (7) of Section 140. It is his submission that the credit which remained to be distributed by the ISD's would not be permitted to be transitioned under the said provisions also considering the cumulative effect the other provisions of the CGST Act, would bring about.

8. Having heard learned Counsel for the parties, we are of the *prima-facie* opinion that what would fall for our consideration is the interpretation of the provisions of sub-section (7) of Section 140 and the actual effect it creates or would bring about, and more particularly in the context of the following highlighted wordings of the provision:-

*“(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as (credit under this Act, **within such time and in such manner as may be prescribed even if**) the invoices relating to such services are received on or after the appointed day.”*

9. Learned Counsel for the parties have advanced elaborate submissions on the interpretation, being placed on the said provision and the other relevant provisions of the CGST Act, on the issue of the transitional arrangement, in relation to the input tax credit to be distributed by the ISD's.

10. Today we would have closed the proceedings for judgment on Mr. Venkatraman concluding his rejoinder arguments. However, as a result of a

significant discussion having taken place on the issues as involved, presently, we need to alter such course, by deferring further arguments of Mr. Venkatraman. Such discussion leads us to form an opinion that before we proceed to adjudicate such issues, it would be appropriate that the GST Council considers the issues *inter alia* the effect that Sub-Section (7) of Section 140 would bring about, on the transition of the input tax credit, being permitted under such provision. More particularly, as it is urged on behalf of the Petitioners, that it is ill-conceivable that the input tax credit which was legitimately available with the petitioners before the appointed day, cannot be permanently lost or lapsed, merely because the GST, machinery does not create an effective procedural mechanism, for such credit to be transferred to the Electronic Credit Ledger (ECL) to be utilized, thereby, creating a situation of such credit being permanently lost. It is also their submission that this can never be the intention of the legislation even on a plain reading of sub-section (7) of Section 140.

11. We are thus of the considered opinion that, an appropriate examination of such issues by the GST Council shall assist the Court in taking an appropriate view of the matter.

12. We accordingly adjourn these proceedings to 9th August 2024. As substantial judicial time has been consumed in hearing the proceedings, we accept the request to keep the proceedings “Part Heard”, subject to appropriate

orders in that regard to be passed by the Hon'ble the Chief Justice, if so necessary.

13. In the meantime, the ad-interim reliefs granted earlier shall continue to operate.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)