

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 717/2020

M/s. Sunil Kumar & Company Sri Ganganagar, A-1, Bank Colony,
Sriganganagar-335001 Through Its Proprietor Mr. Sunil Kumar

----Petitioner

Versus

1. Union Of India, Through Secretary, Finance Department,
Government Of India, New Delhi.
2. The Chairman, GST Council, Government Of India, New
Delhi.
3. The State Of Rajasthan, Through Finance Secretary,
Government Of Rajasthan, Secretariate, Jaipur.
4. Chief Commissioner, Central Goods And Service Tax,
Jaipur.
5. Assistant Commissioner, Central Goods And Services Tax,
GST Division, Sriganganagar.

----Respondents

For Petitioner(s)	:	Mr. Pankaj Ghiya, Advocate through video conferencing
For Respondent(s)	:	Mr. Siddharth Ranka, Advocate through video conferencing

**HON'BLE MRS. JUSTICE SABINA
HON'BLE MR. JUSTICE PRAKASH GUPTA**

Order

14/12/2020

We have heard learned counsel for the parties.

Learned counsel for the respondent has submitted that similar writ petition, i.e. **Obelisk Composite Technology LLP Vs. Union of India & Others (D.B. Civil Writ Petition No. 18392/2019)** has been disposed of by Co-ordinate Division Bench of this Court at Principal Seat at Jodhpur vide order dated 12.12.2019. Hence, present petition was liable to be disposed of in

terms of the order passed in Obelisk Composite Technology LLP (supra).

In the writ petition, petitioner has prayed that he may be permitted to file Form TRAN-1 in compliance of Central Goods and Services Tax Act, 2017 (for short 'the CGST Act') read with Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules') in order to enable the petitioner to avail Transitional Credit in Electronic Credit Ledger. It was also prayed that the respondents should give effect to Form GST Tran-1 that had been manually submitted to the respondent-department to avail relevant Legitimate Input Tax Credit.

In the writ petition, validity of Rule 117 of the CGST Rules has also been challenged.

Order passed in **Obelisk Composite Technology LLP** (supra) reads as under:-

1. Heard learned counsel for the respective parties.

2. In the present writ application, the petitioner M/s Obelisk Composite Technology LLP through its partner has made a prayer seeking writ of mandamus to the effect that the filing of declaration in form GST Trans-1 may be allowed to enable the petitioner to claim transition credit of eligible duties on the appointed day in terms of Section 140 of the Central Goods and Service Tax Act, 2017 and to credit the same in its relevant ledger account or in the alternative to refund the eligible amount to the petitioner.

3. A further prayer has been made to declare Rule 117 of the CGST Rules to claim transitional Credit violates the Constitutional provisions and therefore it may be turned down or ordered to be read down as if there is no last date to file TRANS-1.

4. A further prayer has been made to direct the respondents to revive the facility of filing TRANS-1 on common portal.

5. Learned counsel appearing for the Revenue brought to our notice a judgment rendered by Division Bench of this Court in D.B. Civil Writ Petition No. 7454/2019 (M/s Anupam Motors Vs. Union of India) wherein challenge to Rule 117 of the Rules were held to be no longer res integra in view of the decision of Gujarat High Court in Willowood Chemicals Pvt. Ltd. Vs. Union of India (R/ Special Civil Application No. 4252 of 2018) decided on 12th/19th September, 2018 and the challenge to the constitutional validity of Section 140 (3) of CGST Act and the proviso to Rule 117 of the Rules were dismissed.

6. Learned counsel for the State further submits that the Union of India has extended the last date for submitting the GST TRANS-1 upto 31st December, 2019 but the procedure stipulated under Sub-rule 1(A) of Rule 117 requires the petitioner to make application through the GST counsel who may make a recommendation to the Commissioner who shall act on the basis of such direction of the counsel.

7. In this respect, our attention was drawn to a judgment passed by this Court in SBCWP No. 4315/2019 (M/s Shree Motors Vs. Union of India & Ors.) which was disposed of vide order dated 21.11.2019.

8. Accordingly, upon taking the aforesaid submissions into consideration, we are of the considered view that the challenge to the constitutional validity of Rule 117 no more being res integra, this Court cannot entertain such prayer and accordingly reject the same, however, considering the fact that the Union of India and the Finance Department have extended the period contemplated under Rule 1A of Rule 117 till 31st December, 2019, we grant liberty to the petitioner to make an application before GST Council (through Standing Counsel, who is further requested to hand over the same to the jurisdictional officer) for forwarding the same to the GST Council to issue requisite certificate of recommendation alongwith requisite particulars, evidence and a certified copy of the order instantly and such decision be taken forthwith and if the

petitioner's assertion is found to be correct, the GST Council shall issue necessary recommendation to the Commissioner to enable the petitioner to get the benefit of CENVAT credit within the stipulated time as stipulated by the Union of India i.e on or before 31st December, 2019.

9. The writ application stands disposed of in terms of the aforesaid directions."

Thus, the controversy involved in the present writ petition is similar to the controversy involved in Obelisk Composite Technology LLP (supra).

Hence, the writ petition is liable to be disposed of in terms of the decision rendered by Co-ordinate Division Bench of this Court Principal Seat at Jodhpur in Obelisk Composite Technology LLP (supra).

Accordingly, we grant liberty to the petitioner to make an application before GST Council through Standing Counsel, who is further requested to hand over the same to the jurisdictional officer for forwarding the same to the GST Council to issue requisite certificate of recommendation alongwith requisite particulars, evidence and a certified copy of the order instantly and such decision be taken forthwith and if the petitioner's assertion is found to be correct, the GST Council shall issue necessary recommendation to the Commissioner to enable the petitioner to get the benefit of CENVAT credit within the stipulated time as stipulated by the Union of India.

Writ petition stand disposed of in the above terms.

(PRAKASH GUPTA),J

(SABINA),J