IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF NOVEMBER, 2019

BEFORE

THE HON'BLE MRS.JUSTICE S.SUJATHA

**WRIT PETITION NO.33290/2019**
**C/w W.P.No.39692/2018, W.P.No.33564/2018,**
**W.P.No.41874/2019, W.P.No.33289/2019,**
**W.P.No.27590/2018 & W.P Nos.29138-29141/2018**
**W.P.No.26410/2019, W.P.No.24302/2019,**
**W.P.No.15236/2018, W.P.No.49714/2019 AND**
**W.P.No.50294/2019 (T-RES)**

**IN W.P No.33290/2019**

**BETWEEN:**

M/S ASIAN PAINTS LIMITED
BALAGRANAHALLI VILLAGE
28TH KM STONE
HOSUR ROAD
ATTIBELE INDUSTRIAL AREA
BENGALURU ... PETITIONER

(BY SRI.ATUL KRISHNA RAO ALUR, ADVOCATE)

**AND:**

1. UNION OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
THROUGH ITS SECRETARY (REVENUE)
NORTH BLOCK
NEW DELHI-110 001

2. THE NODAL OFFICER

PRINCIPAL CHIEF COMMISSIONER-DIVISION 7,
CENTRAL GOODS AND SERVICE TAXES
BENGALURU WEST COMMISSIONERATE
POST BOX NO: 5400
C.R.BUILDING
BENGALURU – 560 001.

3. GOODS AND SERVICE TAX NETWORK
THROUGH ITS CHAIRMAN
EAST WING, 4TH FLOOR
WORLD MARK-1 AEROCITY
NEW DELHI-110 037.

4. THE OFFICE OF THE GOODS AND SERVICES TAX COUNCIL, TOWER 11, 5TH FLOOR
JEEVAN BHARTHI BUILDING
JANPATH ROAD, CONNAUGHT PLACE
NEW DELHI-110 001.

5. THE COMMISSIONER OF COMMERCIAL TAXES (GST) VTK-1
9TH CROSS, KALIDASA ROAD
GANDHINAGAR
BANGALORE – 560 009.

6. THE ASSISTANT COMMISSIONER
OF COMERCIAL TAXES, LGSTO-20
NO:19/3, CUNNINGHAM ROAD,
BENGALURU – 560 052. ... RESPONDENTS

(BY SRI.VIKRAM ADITYA HUILGOL, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO REOPEN THE GST COMMON PORTAL FOR RECTIFYING FORM GST TRAN-1 IN

ORDER TO AVAIL THE ELIGIBLE CREDIT IN THE ELECTRONIC CREDIT LEDGER OF PETITIONER AND ETC.

**IN W.P No.39692/2018**

**BETWEEN:**

M/S VERTIV ENERGY PRIVATE LIMITED
SJR PRIMUS, 4TH FLOOR
KORAMANGALA, 7TH BLOCK, BANGALORE
KARNATAKA – 500 095
(REPRESENTED BY SHRI VENKATESHA BABU
DIRECTOR)

... PETITIONER

(BY SRI.RAVI RAGHVAN A/W MS. MANASI KHARE & SRI SYED M.PEERAN, ADVOCATES FOR SRI/SMT LAKSHMI KUMARAN, ADVOCATE)

**AND:**

1. UNION OF INDIA
THROUGH ITS REVENUE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
128-A/NORTH BLOCK
NEW DELHI-110 001.

2. THE CENTRAL BOARD OF INDIRECT
TAXES AND CUSTOMS,
THROUGH ITS CHAIRMAN
NORTH BLOCK
NEW DELHI-110 001.

3. THE GOODS AND SERVICES TAX COUNCIL,
5TH FLOOR, TOWER II
JEEVAN BHARTHI BUILDING
JANPATH ROAD, CONNAUGHT PLACE

NEW DELHI-110 001.
REPRESENTED BY ITS CHAIRPERSON

4. THE STATE OF KARNATAKA
THROUGH THE GOVERNMENT PLEADER
HIGH COURT, KARNATAKA – 560 001.

5. THE COMMISSIONER OF CGST, KARNATAKA
S.P COMPLEX, LALBHAGH ROAD
BANGALORE
KARNATAKA – 560 027.

6. GOODS AND SERVICES TAX NETWORK
4TH FLOOR, EAST WING, WORLD MARK-1,
AEROCITY, NEW DELHI – 110 037
REPRESENTED BY C.E.O.

7. THE ASSISTANT COMMISSIONER OF CGST
RANGE D, SOUTH DIVISION,
KENDRIYA SADAN, KORAMANGALA
KARNATAKA – 560 034.

... RESPONDENTS

(BY SRI JEEVAN J.NEERALGI, ADVOCATE FOR R1-3 & R5-7
SRI. T.K.VEDAMURTHY, AGA FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE DIRECTION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA HOLDING THT THE TIME LIMIT PRESCRIBED UNDER RULE 117 OF CGST RULES, 2017 AND RULE 117 OF KARNATAKA GST RULES, 2017 IS ULTRA VIRES TO THE PROVISION OF SECTION 140 OF THE CGST ACT, 2017; AND ETC.

**IN W.P No.33564/2018**

**BETWEEN:**

M/S WEIWO COMMUNICATION PRIVATE LIMITED
NO.464, KRISHNA TEMPLE ROAD,
INDIRANAGAR 1ST STAGE
NEXT TO SBI BANK
BENGALURU – 560 038
(REPRESENTED BY SRI.MA HAIDONG
AGED ABOUT 30 YEARS
S/O XIAO XIAN MA
DIRECTOR OF M/S. WEIWO COMMUNICATION
PRIVATE LIMITED)

... PETITIONER

(BY SRI. RAGHURAMAN.V., ADVOCATE)

**AND:**

1. ASSISTANT COMMISSIONER, LVO,
   LGSTO 045
   BENGALURU

2. COMMISSIONER OF CENTRAL TAXES
   BENGALURU EAST COMMISSIONERATE
   BMTC BUILDING, OLD AIRPORT ROAD
   DOMLUR, BANGALORE – 560 071

3. UNION OF INDIA
   MINISTRY OF FINANCE
   REPRESENTED BY SECRETARY
   NORTH BLOCK, NEW DELHI-110 001

4. CENTRAL BOARD OF INDIRECT TAXES
   AND CUSTOMS
   R.NO.227-B, DEPARTMENT OF REVENUE
   NORTH BLOCK

NEW DELHI – 110 001

...RESPONDENTS

(BY SRI JEEVAN.J.NEERALAGI, ADVOCATE FOR R1-R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THA THE PROVISIONS OF RULE 117 OF CGST RULES, 2017, SET OUT AS ANNEXURE-A, IN SO FAR AS IT PRESCRIBES A TIME LIMIT, AS BEING BEYOND THE SCOPE OF SECTION 140(1) OF THE CGST ACT, 2017 AND ETC.

**IN W.P No.41874/2019**

**BETWEEN:**

M/S RAJAMANE & HEGDE SERVICES
PVT. LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR
SHRI R.N.HEGDE
NO.3/1, MAHADEVAPURA POST,
WHITEFIELD ROAD
BENGALURU – 560 048

... PETITIONER

(BY SRI.H.Y.RAJU, ADVOCATE FOR SRI HANJER RAGHAVENDRA, ADVOCATE)

**AND:**

1. THE NODAL OFFICER
JOINT COMISSIONER OF COMMERCIAL TAXES
DIVISION-6, KIADB BUILDING,
$14^{TH}$ CROSS, PEENYA INDUSTRIAL AREA,
PEENYA $2^{ND}$ STAGE
BENGALURU – 560 072

2. THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES
GSTO-35A, LIC BUILDING
JEEVANBHIMA NAGAR
BENGALURU – 560 075

3. THE COMMISSIONER OF COMMERCIAL TAXES
VANIJA THERIGE KARYALAYA
GANDHINAGARA
BANGALORE – 560 009

4. THE PRINCIPAL CHIEF
COMMISSIONER OF CENTRAL TAX
POST BOX NO.5400, C.R.BUILDING
QUEEN'S ROAD,
BENGALURU – 560 001

5. THE GOODS AND SERVICE TAX COUNCIL
5TH FLOOR, TOWER II
JEEVAN BHARTI BUILDING
JANPATH ROAD, CONNAUGHT PLACE
NEW DELHI – 110 001

... RESPONDENTS

(BY SRI VIKRAM ADITY HUILGOL, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO RECTIFY THE IT TECHNICAL GLITCHES ERUPTED IN FILING TRAN-1 GST COMMON PROTAL AND ENABLE THE PETITIONER TO AVAIL THE TRANSIT CREDIT OF CENVAT CREDIT IN THEIR ELECTRONIC CREDIT LEDGER AND ETC.

**IN W.P No.33289/2019**

**BETWEEN:**

M/S AHUJA CONTINENTAL PVT. LTD
NO.1109-1110, MITTAL TOWERS
"A" WING, M.G.ROAD
BENGALURU – 560 001
(REPRESENTED BY ITS DIRECTOR
SHRI DIVEY AHUJA)

... PETITIONER

(BY SRI.ATUL KRISHNA RAO ALUR, ADVOCATE)

**AND:**

1. UNION OF INDIA
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE
THROUGH ITS SECRETARY (REVENUE)
NORTH BLOCK
NEW DELHI-110 001

2. THE NODAL OFFICER
PRINICIPAL CHIEF COMMISSIONER-DIVISION 7
CENTRAL GOODS AND SERVICE TAXES
BENGALURU WEST COMMISSIONERATE
POST BOX NO:5400
C.R.BUILDING
BENGALURU – 560 001

3. GOODS AND SERVICE TX NETWORK
THROUGH ITS CHAIRMAN
EAST WING, 4TH FLOOR
WORLD MARK-1, AEROCITY
NEW DELHI – 110 037

4. THE OFFICE OF THE GOODS

AND SERVICE TAX
COUNCIL, TOWER 11, 5TH FLOOR
JEEVAN BHARTHI BUILDING
JANPATH ROAD, CONNAUGHT PLACE
NEW DELHI – 110 001

5. THE COMMISSIONER OF COMMERCIAL
TAXES (GST), VTK-1
9TH CROSS, KALIDASA ROAD
GANDHINAGAR
BANGALORE – 560 009

6. THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES, LGSTO-20
NO:19/3, CUNNINGHAM ROAD
BENGALURU – 560 052

... RESPONDENTS

(BY SRI VIKRAM ADITYA HUILGOL, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO REOPEN THE GST COMMON PORTAL FOR RECTIFYING FORM GST TRAN-1 IN ORDER TO AVAIL THE ELIGIBLE CREDIT IN THE ELECTRONIC CREDIT LEDGER OF PETITIONER AND ETC.

**IN W.P No.27590/2018 & W.P.Nos.29138-141/2018**

**BETWEEN:**

M/S ESCON GENSETS PRIVATE LIMITED
# 31, 6TH B MAIN
7TH CROSS, HMT LAYOUT, RT NAGAR
BENGALURU – 560 032
(REPRESENTED BY SRI
PRASHANT KUMAR DHANDHANIA
AGED ABOUT 53 YEARS
S/O NARESH KUAMR DHANDHANIA

MANAGING DIRECTOR OF
M/S ESCON GENSETS PRIVATE LIMITED)

... PETITIONER

(BY SRI.RAGHURAMAN V., ADVOCATE)

**AND:**

1. UNION OF INDIA
MINISTRY OF FINANCE
REPRESENTED BY SECRETARY
NORTH BLOCK,
NEW DELHI-110 001

2. CENTRAL BOARD OF INDIRECT TAXES
AND CUSTOMS
R.NO.227-B, DEPARTMENT OF REVENUE
NORTH BLOCK
NEW DELHI-110 001

3. THE COMMISSIONER OF CENTRAL TAX
BANGALORE NORTH COMMISSIONERATE
HMT BHAVAN,K GANGANAGAR
BENGALURU – 560 032

4. JOINT COMMISSIONER OF CENTRAL TAX
BANGALORE NORTH COMMISSIONERATE
HMT BHAVAN,K GANGANAGAR
BENGALURU – 560 032

5. SUPERINTENDENT OF CENTRAL TAX
NORTH DIVISION 5, 2ND FLOOR
NO.16/1, S.P.COMPLEX,
LALBAGH ROAD,
BANGALORE – 560 027

... RESPONDENTS

(BY SRI SHIVAYOGISWAMY, CGSC)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE PROVISIONS OF RULE 117 OF CGST RULES, 2017, SET OUT AS ANNEX-A IN SO FOR AS IT PRESCRIBES A TIME LIMIT, AS BEING BEYOND THE SCOPE OF SEC.140(1) OF THE CGST ACT, 2017 AND ETC.,

**IN W.P No.26410/2019**

**BETWEEN:**

M/S KONGOVI PRIVATE LIMITED
# 377, 10TH CROSS, IV PHASE
PEENYA INDUSTRIAL AREA
BANGALORE – 560 058
(REPRESENTED BY PRADEEP KUMAR SAMAL)

... PETITIONER

(BY SRI.G.SHIVADASS SR. COUNSEL A/W SRI RISHAB.J AND SRI PRASHANTH SHIVADASS, ADVOCATES)

**AND:**

1. COMMISSIONER OF CENTRAL TAX, GST
BENGALURU NORTH-WEST COMMISSIONERATE
2ND FLOOR, BMTC BUS STAND COMPLEX
SHIVAJINAGAR
BANGALORE – 560 051

2 ASSISTANT COMMISSIONER OF CENTRAL TAX, GST
NWD-1, DIVISION
BENGALURU NORTH-WEST COMMISSIONERATE
2ND FLOOR, BMTC BUS STAND COMPLEX
SHIVAJINAGAR
BANGALORE – 560 051

3. ASSISTANT COMMISSIONER OF
CENTRAL TAX (ADJN)
BENGALURU NORTH-WEST COMMISSIONERATE

2ND FLOOR, BMTC BUS STAND COMPLEX
SHIVAJINAGAR
BANGALORE – 560 051

4. THE UNION OF INDIA
THROUGH ITS REVENU SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
128-A/NORTH BLOCK
NEW DELHI

5. THE CENTRAL BOARD OF
INDIRECT TAXES AND CUSTOMS
THROUGH ITS CHARIMAN
NORTH BLOCK, NEW DELHI – 110 001

6. THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR, TOWER II,
JEEVAN BHARTI BUILDING
JANPATH ROAD, CONNAUGHT PLACE,
NEW DELHI – 110 001

7. THE NODAL OFFICER
ADDITIONAL COMMISSIONER (PCCO)
OFFICE OF PRINCIPAL COMMISSIONER
OF CENTRAL TAX
BANGALORE ZONE
C.R.BUILDING, QUEENS ROAD,
BANGALORE – 560 001

... RESPONDENTS

(BY SRI JEEVAN J.NEERALGI, ADVOCATE
SRI C.SHASHIKANTHA, ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED REJECTION ORDER ISSUED DATED 20.05.2019 AT ANNEXURE-A ISSUED BY R-1 AND DIRECT THE

OFFICER TO RE-CONSIDER THE REQUEST MADE BY THE PETITIONER FOR GRANT OF TRANSITIONAL CREDIT IN QUESTION AND ETC.,

**IN W.P No.24302/2019**

**BETWEEN:**

HOSAMANE PRECISION PARTS
HAVING ITS OFFICE AT NO.120
KAMBLIPURA GATE
SHIDALAGHATTA ROAD
HASIGALA POST
HOSKOTE – 562 114
REP. BY ITS MANAGING PARTNER
SRI RAJITH RAGHAVENDRA
AGED ABOUT 30 YEARS
R/AT 18TH, 5TH CROSS, OFF BOREWELL ROAD
DOSWORTH LAYOUT, WHITEFILED ROAD
BANGALORE NORTH
BENGALURU – 560 066

... PETITIONER

(BY SRI.VENKATESH KUMAR.S, ADVOCATE)

**AND:**

1. THE UNION OF INDIA
THROUGH ITS REVENUE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
128-A/NORTH BLOCK
NEW DELHI-110 001

2. THE CENTRAL BOARD OF
INDIRECT TAXES AND CUSTOMS
THROUGH ITS CHARIMAN
NORTH BLOCK, NEW DELHI – 110 001

3. THE GOODS AND SERVICES TAX COUNCIL
FIFTH FLOOR, TOWER II,
JEEVAN BHARTI BUILDING
JANPATH ROAD, CONNAUGHT PLACE,
NEW DELHI – 110 001
REPRESENTED BY COMMISSIONER OF GST

4. THE STATE OF KARNATAKA
THROUGH THE GOVERNMENT PLEADER
HIGH COURT OF KARNATAKA
BENGALURU – 560 001

5. THE COMMISSIONER OF CENTRAL TAX
BANGALORE EAST
C.R.BUILDING, QUEENS ROAD
BANGALORE – 560 001

6. THE ASSISTANT COMMISSIONER OF
CENTRAL TAX
EAST DIVISION
BANGALORE EAST COMMISSIONERATE
BMTC BUS STAND, HAL AIRPORT ROAD
DOMLUR
BENGALURU – 560 071

7. THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAX
LGST-36, DVO-5,
BANGALORE – 560 075

... RESPONDENTS

(BY SRI VIKRAM ADITYA HUILGOL, HCGP FOR R1;
SRI. T.K VEDAMURTHY, AGA FOR R4
SRI K.M.SHIVAYOGISWAMY, ADVOCATE FOR R2,3,5 &6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS EITHER TO OPEN THE

PORTAL, SO AS STO ENABLE THE PETITIONER TO FILE THE TRAN-1 ELECTRONICALLY FOR CLAIMING THE TRANSITIIONAL CREDIT OR ACCEPT THE MANUALLY FILED TRAN-1 AND ALLOW THE INPUT CREDITS, AFTER PROCESSING THE SAME, IF IT IS OTHERWISE ELIGIBLE IN LAW AND ETC.

**<u>IN W.P No.15236/2018</u>**

**<u>BETWEEN:</u>**

ORIGAMI CELLULO
PRIVATE LIMITED
S8 AND S9 SY. NO.38, APPAREL PAR,
INDUSTRIAL AREA, ARENAHALLI
GUDDADAHALLI VILLAGE
DODDABALLAPUR
BENGALURU RURAL DISTRICT
BENGALURU – 561 203
GSTIN : 29AABCO6103C1ZV
REPRESENTED BY ITS DIRECTOR
SRI MANOJ KUMAR PACHISIA

... PETITIONER

(BY SRI K.MALLAHA RAO, ADVOCATE)

**<u>AND:</u>**

1. THE UNION OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
ROOM NO.46, NORTH BLOCK
NEW DELHI- 110 001

2. STATE OF KARNATAKA
FINANCE DEPARTMENT
VIDHANA SOUDHA
BANGALORE-560 001

3. GST COUNCIL
THROUGH ITS CHAIRPERSON
UNION FINANCE MINISTER
MINISTRY OF FINANCE, NORTH BLOCK
NEW DELHI -110 001

4. GOODS AND SERVICE TAX NETWORK
HAVING ITS OFFICE AT:
EAST WING, 4TH FLOOR
WORLD MARK – 1, AEROCITY
NEW DELHI-110 037
REP. BY COMMISSIONER OF GST

5. GST COMMISSIONERATE
CENTRAL REVENUE BUILDING
QUEENS ROAD
BENGALURU – 560 001
REP. BY COMMISSIONER OF GST

... RESPONDENTS

(BY SRI T.K VEDAMURTHY, ADVOCATE FOR R2;
SRI VIKRAM ADITYA HUILGOL, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO CONSIDER THE REVISED INVOICE VIDE ANNEXURE-E FOR REVISED VIDE TRACT ARN DATED 27.12.2017 RETURNS IN TRAN-1 FOR THE RELEVANT PERIOD UNDER THE GST ACT AND ETC.,

**IN W.P No.49714/2019**

**BETWEEN:**

M/S LIFESTYLE INTERNATIONAL PVT. LTD
77 TOWN CENTER, BUILDING NO.3
2ND FLOOR, WEST WING
OLD AIRPORT ROAD, YEMLUR P.O
BENGALURU – 560 037

(REPRESENTED BY
SHRI JAGDISH SOLANKI
ASSISTANT VICE PRESIDENT GROUP TAX)

... PETITIONER

(BY SRI.RAVI RAGHAVAN A/W SRI SYED M.PEERAN &
MS.MANASI KHARE, ADVOCATES)

**AND:**

1. THE UNION OF INDIA
THROUGH ITS REVENUE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
128-A/NORTH BLOCK
NEW DELHI-110 001

2. THE CENTRAL BOARD OF
INDIRECT TAXES AND CUSTOMS
THROUGH ITS CHARIMAN
NORTH BLOCK, NEW DELHI – 110 001

3. THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR, TOWER II,
JEEVAN BHARTI BUILDING
JANPATH ROAD, CONNAUGHT PLACE,
NEW DELHI – 110 001
REPRESENTED BY SECRETARY TO FINANCIAL
DEPARTMENT

4. THE STATE OF KARNATAKA
VIDHANA SOUDHA
BENGALURU – 560 001

5. THE JOINT COMMISSIONER OF CENTRAL TAX
(E-AUDIT), VANIJYA THERIGE KARYALAYA
KALIDASA MARG, GANDHINAGAR
BENGALURU, KARNATAKA – 560 009

6. THE ASSISTANT COMMISSIONER OF
COMMERCIAL TAX
LGSTO-15, DGSTO-4
VTK-2, 'A' BLOCK
1ST FLOOR, KORAMANGALA
BENGALURU, KARNATAKA - 560 047

... RESPONDENTS

(BY SRI VIKRAM ADITYA HUILGOL, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE DIRECTION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA HOLDING THAT THE TIME LIMIT PRESCRIBED UNDER RULE 117 OF THE CGST RULES 2017 IS ULTRA VIRES TO THE PROVISION OF SECTION 140 OF THE CGST ACT, 2017 AND ETC.,

**IN W.P No.50294/2019**

**BETWEEN:**

M/S WHIZDM INNOVATIONS PRIVATE LIMITED
3RD FLOOR, SURVEY NO.17/1
OUTER RING ROAD, KADUBEESANAHALLI
BANGALORE – 560 087
(REPRESENTED BY ITS DIRECTOR
SHRI SANJAY AGARWAL)

... PETITIONER

(BY SRI.HARI PRASAD M.S, ADVOCATE)

**AND:**

1. COMMISSIONER OF CENTRAL TAX
GST EAST COMMISSIONERATE
TTMC/BMTC BUS STAND BUILDING
OLD AIRPORT ROAD, DOMLUR
BENGALURU – 560 071

2. THE UNION OF INDIA
THROUGH ITS REVENUE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
128-A/NORTH BLOCK
NEW DELHI

3. THE CENTRAL BOARD OF
INDIRECT TAXES AND CUSTOMS
THROUGH ITS CHARIMAN
NORTH BLOCK, NEW DELHI – 110 001

4. THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR, TOWER II,
JEEVAN BHARTI BUILDING
JANPATH ROAD, CONNAUGHT PLACE,
NEW DELHI – 110 001

5. DEPUTY COMMISSIONER OF CENTRAL TAX
EAST DIVISION -8
BENGALURU EAST COMMISSIONERATE
2ND FLOOR, TTMC/BMTC BUS STAND BUILDING
OLD AIRPORT ROAD, DOMLUR
BENGALURU – 560 071

... RESPONDENTS

(BY SRI JEEVAN J.NEERALGI, ADVOCATE FOR R4
SRI VIKRAM HUILGOL, ADVOCATE FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECTION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA HOLDING THAT THE TIME LIMIT PRESCRIBED UNDER RULE 117 OF THE CGST RULES 2017 AND RULE 117 OF KARNATAKA GST RULES, 2017 IS IS ULTRA VIRES TO THE PROVISION OF SECTION 140 OF THE CGST ACT, 2017 AND ETC.,

THESE PETITIONS COMING ON *FOR PRELIMINARY HEARING IN 'B' GROUP* THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

Since common and akin issues are involved in these matters, the same are heard together and disposed of, by this common order.

2. The petitioners, registered dealers under the Central Goods and Services Tax Act, 2017 ('Act' for short) are seeking direction to the respondents to permit them to file TRAN-1 statutory form either electronically or manually extending the time limit prescribed under Rule 117 read with Section 140 of CGST Act, 2017 to carry forward unutilized credit of duty to the common portal paid under the Finance Act, 1994/VAT Act, 2003.

3. The learned Senior Counsel Sri G. Shivadass representing the petitioners would submit that the very subject matter has been elaborately considered by the Hon'ble High Courts of Delhi, Punjab and Haryana as well as Kerala

and a decision has been rendered directing the respondent-Authorities to permit the registered dealers to file or revise TRAN-1 already filed either electronically or manually, thereby prescribing the cut of date, extending the date prescribed under Rule 117, reserving liberty to the respondents to verify the genuineness of the claims made by the registered dealers on merits of the case. Reliance is placed on the following judgments.

1. **Bhargava Motors vs. Union of India & Ors. 2019-VIL-218-DEL**
2. **M/s Blue Bird Pure Pvt. Ltd. vs. Union of India and Ors. 2019-VIL-347-DEL**
3. **Chogori India Retail Limited. vs. Union of India. 2019(29) G.S.T.L 602 (Del.)**
4. **Adifert Technologies Pvt. Ltd. vs. Union of India and Ors. (2019-VIL-547-DEL)**

4. The learned High Court Government Pleader appearing for the revenue submits that in terms of the circular dated 03.04.2018 issued by the Government of India, Input Tax Grievance Redressal Mechanism has been set up whereby nodal officers have been appointed to redress the grievances of the registered dealers in filing the TRAN-

1/TRAN-2. By virtue of the Rule 117(1A) inserted with effect from 10.09.2018 vide Notification No.48/2018, the commissioner may, on the recommendations of the Council extend the date for submitting the declaration in TRAN-1 by a further period on account of technical difficulties on the common portal. Revised TRAN-1 has to be filed on account of any error committed by the registered persons under Rule 120A of the Rules which contemplates for revision of declaration in Form GST TRAN-1. Hence, no reliance can be placed on Rule 117(1A), to permit the petitioners to file or revise the TRAN-1/TRAN-2 beyond the statutory period prescribed, which otherwise would be causing violence to the language employed in the statue.

5. Having considered the submissions of the learned counsel appearing for the parties and perusing materials on record, it is not in dispute that Rule 117(1A) permits the registered persons who could not submit the declaration within the due date on account of technical glitches on the

common portal, by a further period not beyond 31.03.2019. Though under Rule 117 of the CGST Rules, 2017, period of 90 days from appointed day i.e.01.07.2017 was prescribed, the same has been extended from time to time now upto 31.12.2019 by virtue of the amendment to Sub-Rule 1A of Rule 117 vide Notification No.49/2019/Central Tax dated 09.10.2019. Thus, it is clear that if any technical glitches are found on the common portal of department, the registered persons are permitted to submit the declaration in TRAN-1 up to 31.12.2019 whereas the said extension of time prescribed originally under Rule 117 is not extended, if any technical glitch arises on the error committed by the registered persons. Considering these aspects in the light of Section 140 of the prevailing Rules, the Hon'ble Delhi High Court in ***Krish Automotors Pvt. Ltd.,*** supra has observed as under:

> "Accordingly, a direction is issued to the respondents to permit the petitioner to either submit the TRAN-1 form electronically by opening the electronic portal for that purpose or allow the petitioner to tender said form manually on or before 15th October, 2019 and thereafter, process the petitioner's claim for ITC in

accordance with law. The petition is disposed of in the above terms."

6. Similarly Hon'ble High Court of Punjab and Haryana in the case of ***Adlfert Technologies Pvt. Ltd.***, supra as held thus:

> "9. Having scrutinized record of the case(s) and heard arguments of both sides, we find that on the introduction of GST regime, Government granted opportunity to registered persons to carry forward unutilized credit of duties/taxes paid under different erstwhile taxing statues. GST is an electronic based tax regime and most of people of India are not well conversant with electronic mechanism. Most of us are not able to load simple forms electronically whereas there were a number of steps and columns in TRAN-1 forms thus possibility of mistake cannot be ruled out. 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.

10. 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 Vs The Nodal Officer 2019-TIOL-2068-HC-AHM-GST** 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.

35. The Supreme Court, in the case of *Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors., reported in AIR 1981 SC 487*, has held that Article 14 strikes at the arbitrariness because any action that is arbitrary, must necessarily involve negation of equality. It is sufficient to state that

the content and reach of Article 14 must not be confused with the doctrine of classification. The doctrine of classification which is evolved by the courts is not para-phrase of Article 14 nor is it the objective and end of that Article. Wherever there is arbitrariness in the State action, whether it be of the legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the
Constitution. We may quote the relevant paragraphs 16 and 17 of the judgment thus :

*"16. If the Society is an "authority" and therefore "State" within the meaning of Article 12, it must follow that it is subject to the constitutional obligation under Article 14. The true scope and ambit of Article 14 has been the subject matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification. Unfortunately, in the early stages of the evolution of*

*our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that that Article forbids discrimination and there would be no discrimination where the classification making the differentia fulfils two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action. It was for the first time in E. P. Ayyappa v. State of Tamil Nadu, (1974) 2 SCR 348 : (AIR 1974 SC 555), that this Court laid bare a new dimension of Article 14 and pointed out that that Article has highly activist magnitude and it embodies a guarantee against arbitrariness. This Court speaking through one of us (Bhatgwati, J.) said:*

*"The basic principle which therefore informs both Articles 14 and 16 is equality and inhibition against discrimination. Now what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and*

*meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."*

*17. This vital and dynamic aspect which was till then lying latent and submerged in the few simple but pregnant words of Article 14 was explored and brought to light in Royappa's case and it was reaffirmed and elaborated by this Court in Maneka Gandhi v. Union of India, (1978) 2 SCR 621 : (AIR 1978 SC 597), where this Court again speaking through one of us (Bhagwati, J.) observed :-*

*"Now the question immediately arises as to what is the requirement of Art. 14: what is the content and reach of the great equalizing principle enunciated in this article, There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.......... Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."*

*This was again reiterated by this Court in International Airport Authority's case ( (1979) 3 SCR 1014) at p. 1042: (AIR 1979 SC 1628) (supra) of the Report. It must therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily* *involve negation of equality. The doctrine of classification which is evolved by the Courts is not paraphrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Article 12, Art. 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution."*

36. It is legitimate for a going concern to expect that it will be allowed to carry forward and utilise the CENVAT credit after satisfying all the conditions as mentioned in the Central Excise Law and, therefore, disallowing such vested right is offensive against

Article 14 of the Constitution as it goes against the essence of doctrine of legitimate expectation.

37. The Supreme Court, in the case of *MRF Ltd. v. Assistant Commissioner (Assessment) Sales Tax, reported in 2006 (206) E.L.T. 6 (S.C.)* = ***2006-TIOL-124-SC-CT***, has held that a person may have a 'legitimate expectation' of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The doctrine of legitimate expectation has an important place in developing law of judicial review. We may quote the relevant paragraph 38 of the judgment thus:

*"38. The principle underlying legitimate expectation which is based on Article 14 and the rule of fairness has been restated by this Court in Bannari Amman Sugars Ltd. v. Commercial Tax Officer, 2005 (1) SCC 625. It was observed in paras 8 and 9:*

> *"8. A person may have a 'legitimate expectation' of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may*

*arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The doctrine of legitimate expectation has an important place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the court to apply for judicial review. It is generally agreed that 'legitimate expectation' gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then the decisionmaker should justify the denial of such expectation by showing some overriding public* *interest. (See : Union of India and Ors. v. Hindustan Development Corporation and Ors., AIR 1994 SC 988)*

*9. While the discretion to change the policy in exercise of the executive power, when not trammeled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle* *emerging from the impugned action and if so, does it really satisfy the test of reasonableness.""*

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 mandate of Article 19(1)(g) of the Constitution of India.

39. This High Court, in the case of *Indsur Global Ltd. v. Union of India, reported in 2014 (310) E.L.T. 833 (Gujarat) =* ***2014-TIOL-2115-HC-AHM-CX***, has held as under:

*"34. By no stretch of imagination, the restriction imposed under sub-rule (3A) of Rule 8 to the extend it requires a defaulter irrespective of its extent, nature and reason for the default to pay the excise duty without availing Cenvat credit to his account can be stated to be a reasonable restriction. It leads to a situation so harsh and a position so unenviable that it would be virtually impossible for an assessee who is trapped in the whirlpool to get out of his financial difficulties. This is quite apart from being wholly reasonable, being irrational and arbitrary and*

*therefore, violative of Article 14 of the Constitution. It prevents him from availing credit of duty already paid by him. It also is a serious affront to his right to carry on his trade or business guaranteed under Article 19(1)(g) of the Constitution. On both the counts, therefore, that portion of sub-rule (3A) of rule must fail."*

40. The liability to pay GST on sale of stock carried forward from the previous tax regime without corresponding input tax credit would lead to double taxation on the same subject matter and, therefore, it is arbitrary and irrational.

41. C.B.E. & C. Flyer No.20, dated 1.1.2018 had clarified as under :

*"(c) Credit on duty paid stock : A registered taxable person. other than manufacturer or service provider, may have a duty paid goods in his stock on 1st July 2017. GST would be payable on all supplies of goods or services made after the appointed day. It is not the intention of the Government to collect tax twice on the same goods. Hence, in such cases, it has been provided that the credit of the duty/tax paid earlier would be admissible as credit."*

42. Article 300A provides that no person shall be deprived of property saved by authority of law. While right to the property is no longer a fundamental right but it is still a constitutional right. CENVAT credit earned under the erstwhile Central Excise Law is the property of the writ-applicants and it cannot be appropriated for merely failing to file a declaration in the absence of Law in this respect. It could have been appropriated by the government by providing for the same in the CGST Act but it cannot be taken away by virtue of merely framing Rules in this regard.

43. In the result, all the four writ-applications succeed and are hereby allowed. The respondents are directed to permit the writ applicants to allow filing of declaration in form GST TRAN-1 and GST TRAN-2 so as to enable them to claim transitional credit of the eligible duties in respect of the inputs held in stock on the appointed day in terms of Section 140(3) of the Act. It is further declared that the due date contemplated under Rule 117 of the CGST Rules for the purposes of claiming transitional credit is procedural in nature and thus should not be construed as a mandatory provision.

xxxx

Accordingly, we direct respondents to permit the petitioners to file or revise where already filed incorrect

TRAN-1 either electronically or manually statutory Form(s) TRAN-1 on or before 30th November 2019. The respondents are at liberty to verify the genuineness of claim of petitioners but nobody shall be denied to carry forward legitimate claim of CENVAT/ITC on the ground of non-filing of TRAN-1 by 27.12.2017."

7. In the circumstances, it is obvious that two types of cases would arise for consideration namely:

1. Registered persons who did/could not file TRAN-1 by 27.12.2017 and have no evidence of attempt to load TRAN-1.

2. Registered persons loaded TRAN-1 by 27.12.2017 but there is some error and they intend to revise already loaded TRAN-1.

8. In the light of Section 140 of the Act read with Section 142 and 172 as well as Rule 117(1A), it is clear that though there is no explicit provision to permit revision filing of TRAN-1 at an extended period for the registered persons who fail to furnish the material for having filed the same by 27.12.2017, in the absence of any specific time prescribed under Section 140 of the Act and in terms of introduction of

Rules 117(1A) and 120A, the arguments advanced by the learned counsel for the revenue could not be countenanced. The legitimate rights of the petitioners to carry forward of unutilized credit of duty/tax already paid cannot be denied on technicalities i.e., on the ground of limitation by framing the Rules in the absence of law in the Act as the GST regime is a new tax regime that too in the transitional period. Even in terms of Section 172 any suitable order can be passed within a period of three years if any difficulty arises in giving effect, to any provisions of the Act for the purpose of removing the said difficulty. This Court has no reason to differ from the findings of the Hon'ble Court referred to above.

9. For the reasons aforesaid, the request of the petitioners to extend the time prescribed under Rule 117 cannot be denied.

10. Accordingly, writ petitions are allowed directing the respondents to permit the petitioners to file/revise the

TRAN-1 either electronically or manually on or before 31.12.2019.

However, the respondents are at liberty to verify the genuineness on the merits of the claim of the petitioners in accordance with law.

**Sd/-**
**JUDGE**

HB