

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF APRIL, 2019

BEFORE:

THE HON'BLE MRS. JUSTICE S.SUJATHA

WRIT PETITION No.15854/2019 (T - RES)

BETWEEN:

M/s YOKOGAWA INDIA LTD.,
PLOT NO.96,
ELECTRONIC CITY COMPLEX,
HOSUR ROAD,
BANGALORE-560 100
REP. BY SHRI C.P.RAJESH
HEAD LOGISTICS

... PETITIONER

[BY SRI G.SHIVADASS, SENIOR ADV. FOR SMT.MANASI KHARE,
ADV. A/W SRI RAVI RAGHAVAN, ADV.]

AND:

1. THE UNION OF INDIA
THROUGH ITS REVENUE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE,
128-A/NORTH BLOCK,
NEW DELHI-110001.
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, TROWER II,
JEEVAN BHARTI BUILDING
JANPATH ROAD, CONNAUGHT PLACE,
NEW DELHI-110 001.

4. THE STATE OF KARNATAKA
THROUGH THE GOVERNMENT PLEADER
HIGH COURT OF KARNATAKA
BENGALURU-560001.
5. THE COMMISSIONER OF CENTRAL TAX
BANGALORE SOUTH
C.R. BUILDING, QUEENS ROAD,
BANGALORE-560001.
6. THE ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICE TAX,
SOUTH DIVISION-8,
KENDRIYA SADAN,
7TH FLOOR A-WING,
KORAMANGALA,
BANGALORE-560 034.
7. THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAX
LGST-075, DVO-06,
BANGALORE-560 058. ...RESPONDENTS

[BY SMT.M.R.VANAJA. ADV. FOR R-1 TO R-3, R-5 & R-6;
SRI VIKRAM HUILGOL, HCGP FOR R-4 & R-7.)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE LETTER DATED 22.03.2019 ISSUED BY THE R-6 ENCLOSED AT ANNEXURE-A, AS ILLEGAL, ARBITRARY AND VIOLATIVE OF ARTICLE 14 AND ARTICLE 19[1][g] OF THE CONSTITUTION OF INDIA.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner has assailed the communication dated 22.03.2019 issued by the respondent No.6 at Annexure-A to the writ petition *inter alia* seeking a

direction to the respondents to enable the petitioner to revise their Form GST TRAN-1 in order to transit the amount of Rs.4,31,32,066/- in the Electronic Credit Ledger in terms of the provisions of Section 140[1] and Section 140[5] of the Central Goods Service Tax Act, 2017 ['CGST Act' for short] read with Rule 117 / Rule120A of the CGST Rules 2017 ['Rules' for short].

2. The petitioner company is engaged in manufacturing, trading and selling of electrical and electronic products, engineering solutions, EPC Contracts and software solutions. It is contended that the petitioner was registered as a manufacturer under the Central Excise Act, 1944, as a service provider under the Finance Act, 1994 and also a dealer under the Karnataka Value Added Tax Act, 2003. On the GST regime coming into force from 01.07.2017 in India, the CGST Act and various State GST Acts made specific provisions allowing for the carry forward of credits due

to taxpayers under the old regime into the GST regime. The specific transitional provisions were made allowing taxpayers to take credit in their electronic credit ledger under GST equal to the unutilized credits available to the taxpayer under the old regime on the transition day. The petitioner had duly filed the Form GST TRAN-1 on 12.12.2017 within the prescribed time limit as contemplated under Rule 117 read with the notifications issued by the Central Board of Indirect Taxes and Customs from time to time. The petitioner sought to carry forward the amount of Cenvat credit as contained in the returns filed in the earlier regime in terms of Section 140[1] of the CGST Act. However, it was noticed that no credit pertaining to the closing balance of the Cenvat Credit has been transferred to their Electronic Credit Ledger under the GST regime. On further follow up action made with the GSTN authorities, the petitioner was advised to suitably amend the Form GST TRAN-1. Accordingly, it is

submitted that numerous attempts were made to revise the Form GST TRAN-1 but in vain. On correspondence made with the GST helpdesk and the respondent No.5 – Commissioner of Central Tax, respondent No.6 has addressed to respondent No.5 that the issue remains unresolved and finally the request of the petitioner has been disapproved by the respondent No.6. Hence, this writ petition.

3. Learned Senior Counsel Sri. Shivadass representing the learned counsel for the petitioner submitted that the credit in dispute was validly earned by them under the old tax regime. There is no dispute about the eligibility of credit and its carry forward under the GST regime. The consequences of not being able to avail the rightful due credit is only due to technical glitches, system error. Section 140[1] of the CGST Act enables the petitioner to avail the credit in Electronic Credit Ledger of the credit earned in earlier tax regime.

Rule 117 read with Rule 120A of the CGST Rules provides that the respondent No.5 is duty bound to allow for a one-time revision of the Form GST TRAN1 through the common portal or manually. In support of his contention, the petitioner placed reliance on the order of this Court in the case of ***M/s. Atria Convergnece Technologies Ltd., V/s. Union of India and Others***, reported in ***2019-VIL-128-KAR***.

4. Respective counsel appearing for the respondents made an endeavour to justify the impugned communication.

5. I have carefully considered the submissions of the learned counsel appearing for the parties and perused the material on record.

6. Section 140 of the Act, 2017 deals with Transitional arrangements for input tax credit and the same reads thus:

“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 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 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.”

7. Rule 117 of the Rules deals with the

Transitional Provisions and the same reads as under:

“117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day

[1] Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in

FORM GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit [of eligible duties and taxes, as defined in Explanation 2 to section 140] to which he is entitled under the provisions of the said section:

PROVIDED, that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days.”

8. Rule 120A of the Rules reads as under:

“120A. Revision of declaration in FORM GST TRAN-1.

*Every registered person who has submitted a declaration electronically in FORM GST TRAN-1 within the time period specified in rule 117, rule 118, rule 119 and rule 120 may revise such declaration **once** and submit the revised declaration in FORM GST TRAN-1 electronically on the common portal within the time period specified in the said rules or such further period as may be extended by the Commissioner in this behalf.”*

9. This Rule 120A has been inserted vide notification No.34/2017 – Central Tax, dated 15.09.2017 subsequent to the insertion of this Rule, sub-rule [1A] has been inserted to Rule 117 by notification dated 10.09.2018 and the same runs as under:

“[a] after sub-rule [1], the following sub-rule shall be inserted, namely:-

“[1A] Notwithstanding anything contained in sub-rule [1], the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond 31st March, 2019, in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.””

10. Section 172 of the Act contemplates regarding removal of difficulties and the same is quoted here under for ready reference:

“172. Removal of difficulties

[1] If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

PROVIDED that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

[2] Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.”

11. A comprehensive reading of these provisions harmoniously, would indicate that Rule 117 of the Rules provides for submitting a declaration electronically in FORM GST TRAN-1 within 90 days from the appointed day on the common portal specified therein, separately, the amount of input tax credit to which the registered person is entitled to take input tax credit under Section 140. The Commissioner is empowered to extend the period of 90 days by a further period not exceeding 90 days for submitting the declaration electronically in FORM GST TRAN-1 in terms of Rule 117[1A]. A reading of this Rule suggests that it relates to filing of the declaration electronically in FORM GST TRAN-1 for the first time. Subsequent to amendment to Rule 117 by inserting sub-rule 1A, the time period specified for filing FORM GST TRAN-1 has

been extended for further period not beyond 31.03.2019, in respect of registered person who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom, the Council has made recommendations.

12. The Rule 120A provides for revision of declaration. In the event of the registered person who had submitted a declaration electronically in FORM GST TRAN-1, intends to revise such declaration once, this provision can be invoked. This provision makes it clear that the revision of the declaration in FORM GST TRAN-1 can be made only once not in perpetuity.

13. Regarding the IT grievance redressal mechanism to address the grievances due to technical glitches on GST Portal, circular instructions has been issued by the Government of India, Ministry of Finance

[Department of Revenue] Central Board of Excise & Customs, New Delhi dated 03.04.2018.

14. Section 172 of the Act contemplates about the removal of difficulties wherein correction/rectification/revision of the FORM GST TRAN-1 can also be addressed on general or special basis, taking into account the ground realities qua effective implementation of Section 140 of the Act.

15. Considering these aspects, this Court in **M/s. Atria Convergnece Technologies Ltd** reported in **2019 VII-127-Karnataka** (supra), has held that the petitioner therein is entitled to revise or rectify the errors in Form GST TRAN-1 in terms of Rule 120A wherein the Commissioner is empowered to extend the time period specified in Rule 117 as the petitioner is intending to revise the FORM GST TRAN-1 for the first time, the same squarely comes under Rule 120A. Hence, the respondent authorities ought to have

considered the request/representation of the petitioner to permit or allow it to revise the declaration in FORM GST TRAN-1. The said principles of law is squarely applicable to the present set of facts.

16. The circular issued by the Central Board of Indirect Taxes and Customs [CBITC] dated 03.04.2018 in relation to the setting up an IT Grievance Redressal Mechanism to address the grievances of taxpayers due to technical glitches on the GST Portal provides for amending any Form or Return already filed. The circular provides for appointing of Nodal Officer for identification of technical issues faced by the taxpayers on the Common Portal. The Nodal officer is required to resolve such issues.

17. Section 172 of the CGST Act provides for removal of difficulties. In the case of ***M/s. Kongovi Private Limited V/s. The Union of India and others***, reported in ***2019-VIL-132-KAR***, this Court has held that

even on the technical glitches arising out of the petitioner/assesse's inadvertence requires to be addressed by the Nodal Officers appointed in terms of Circular instructions dated 03.04.2018 supra. The object and purpose of the transitional arrangements made under Section 140 of the Act requires to be achieved to its logical end and accordingly directed the petitioner to approach the jurisdictional Nodal Officer and the Nodal Officer was directed to consider the grievances of the petitioner in accordance with law.

18. For the foregoing reasons, the request of the petitioner to revise the Form GST TRAN-1 for the first time cannot be denied on technicalities. The avowed object and purpose of the transitional arrangements has to be achieved. In the new tax regime, such glitches not being uncommon, a pragmatic approach would sub-serve the ends of justice.

Accordingly, The order impugned at Annexure-A is set aside and the matter is restored to the file of the respondent No.6 to re-consider the grievance of the petitioner in the light of the observations made herein above. The compliance of this order shall be made and a decision shall be taken in accordance with law, in an expedite manner, in any event, within a period of four weeks from the date of receipt of the certified copy of the order.

Writ petition stands disposed of in terms of above.

**Sd/-
JUDGE**

Nc: