

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 7347 of 2019**

M/S KAMBAY AROMATICS

Versus

UNION OF INDIA

Appearance:

ANANDODAYA S MISHRA(8038) for the Petitioner(s) No. 1

MR CHINTAN DAVE, AGP(1) for the Respondent(s) No. 2

NOTICE SERVED(4) for the Respondent(s) No. 3

VIRAL K SHAH(5210) for the Respondent(s) No. 1

CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**  
and  
**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

**Date : 11/03/2020****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1 Rule returnable forthwith. Learned advocate Mr. Viral Shah waives service of notice of rule for and on behalf of the respondents No.1 and 3 and learned Assistant Government Pleader Mr. Chintan Dave waives service of notice of rule for and on behalf of the respondent No.2.

2 By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

*“A. That this Hon'ble Court may be pleased to issue an appropriate writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, ordering and directing the respondents themselves, their officers and subordinate to act upon or either allow the petitioner to carry forward the credit or to pay the amount of credit in cash.*

*B. And pass, such further order/orders for granting relief(s) as this*

*Hon'ble Court may deem fit and proper in the facts and circumstances of the case to meet the ends of justice.”*

3 The petitioner is registered under the provisions of the Excise Act and under the provisions of the Gujarat Value Added Tax Act, 2003.

4 It is the case of the petitioner that Section 140 of the Central Goods and Services Act, 2017 [for short, 'the Act, 2017'] provides that the petitioner is entitled to carry forward credit of CENVAT as available / admissible on the day immediately preceding the appointed day i.e. 1<sup>st</sup> July 2017 read with Rule 117 of the Central Goods and Services Tax Rules, 2017 [for short, 'the Rule 2017']. According to the petitioner, the petitioner tried to upload form GST TRAN-1 to claim CENVAT credit amounting to Rs.16,88,141/- and Rs.1,02,865/- as credit of Value Added Tax for their firm. However, due to technical glitches in the GST portal, the petitioner could not file / upload the form GST TRAN-1.

5 It is the case of the petitioner that time and again the petitioner approached the GST Department as well as jurisdictional Nodal Officer appointed by the GST Department for redressal of its grievances. In spite of the efforts made by the petitioner, the case of the petitioner was not considered by the competent authority so as to enable the petitioner to claim credit of CENVAT in view of transitional provisions of Section 140 of the Act, 2017 as on 1<sup>st</sup> July 2017. Learned advocate Mr. Mishra for the petitioner submitted that the petitioner is entitled to credit of CENVAT as well as service tax as on 30<sup>th</sup> June 2017 as per the provisions under Section 140(1) of the Act, 2017 read with Rule 117 of the Rules 2017.

6 Learned advocate for the petitioner relied upon the decision of a Coordinate Bench of this Court in the case of **M/s Siddharth**

**Enterprises vs. The Nodal Officer** in Special Civil Application No.5758 of 2019 and allied matters decided on 6<sup>th</sup> September 2019, wherein it is held that the petitioner is entitled to transitional credit of CENVAT as well as service tax as it is the legitimate right of the petitioner to carry forward credit of CENVAT as well as service tax under the Act, 2017:

“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 *Insur Global Ltd. v. Union of India*, reported in 2014 (310) E.L.T. 833 (Gujarat), has held as under:

“34. By no stretch of imagination, the restriction imposed under sub-rule (3A) of Rule 8 to the extent 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 1<sup>st</sup> 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.”*

7 Learned advocate for the petitioner submitted that the respondents may be directed to consider the case of the petitioner after verification of credit of CENVAT as well as service tax available to the petitioner as on 1<sup>st</sup> July 2017 so as to enable the petitioner to upload form GST TRAN-1 on or before 31<sup>st</sup> March 2020 in view of the order No.01/2020-GST dated 7<sup>th</sup> February, 2020 issued by Government of India, Ministry of Finance.

8 On the other hand, learned standing counsel Mr. Ankit Shah for the respondents submitted that as per the respondents, there are no technical glitches found in the case of the petitioner and therefore, the petitioner was not allowed to upload the form GST TRAN-1. On a specific query put to the learned advocate for the respondents that

whether the claim of transitional credit made by the petitioner is genuine or not, he submitted that on verification of such claim, if it is found to be genuine, the petitioner can file / upload GST TRAN-1. Learned standing counsel for the respondents as regards genuineness claim submitted that the same shall be looked into by the respondent No.4.

9 Having considered the submissions made by the respective parties and having through the materials on record, it appears that if the petitioner could not upload the form GST TRAN-1 due to technical glitches and in spite of various representations made by the petitioner, he was not allowed to upload the form GST TRAN-1.

10 In view of the settled legal position as stated hereinabove, the petitioner is entitled to claim credit of CENVAT as well as service tax as on 30<sup>th</sup> June 2017 as per the provisions under Section 140(1) of the Act, 2017 read with Rule 117 of the Rules 2017.

11 In such circumstances, respondent No.4, who is the jurisdictional officer, is directed to verify the claim of credit of CENVAT and service tax of the petitioner so as to enable the petitioner to carry forward by filing / uploading form GST TRAN-1 on GST portal.

12 Reliance placed by the petitioner on the order No.01/2020-GST dated 7<sup>th</sup> February 2020 of the Central Board of Indirect Taxes and Customs reads as under:

*“F. No.CBEC-20/06/17/2018-GST(pt. I)  
Government of India  
Ministry of Finance  
(Department of Revenue)  
(Central Board of Indirect Taxes and Customs)*

New Delhi, the 7<sup>th</sup> February, 2020

Order No.01/2020-GST

*Subject : Extension of time limit for submitting the declaration in Form GST TRAN-1 under Rule 117(1A) of the Central Goods and Service Tax Rules, 2017 in certain cases*

*In exercise of the powers conferred by sub-rule (1A) of Rule 117 of the Central Goods and Services Tax Rules, 2017 read with Section 168 of the Central Goods and Services Tax Act, 2017, on the recommendations of the Council, and its supersession of Order No.01/2019-GST dated 31.01.2019, except as respects things done or omitted to be done before such supersession, the Commissioner hereby extends the period for submitting the declaration in FORM GST TRAN-1 till 31<sup>st</sup> March, 2020, for the class of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and whose cases have been recommended by the Council.*

Sd/-

(Yogendra Garg)

Principal Commissioner (GST)”

13 In view of the above facts, respondent No.4 shall complete the exercise of verification and permit the petitioner to upload the form GST TRAN-1 within a period of two weeks from the date of receipt of the writ of this order so that the petitioner can upload the form GST TRAN-1 on or before 31<sup>st</sup> March 2020.

14 With the aforesaid directions, petition stands disposed of. Rule is made absolute to the aforesaid extent. Direct service is permitted.

**(J. B. PARDIWALA, J)**

**(BHARGAV D. KARIA, J)**

CHANDRESH