# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## R/SPECIAL CIVIL APPLICATION NO. 5718 of 2019

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SHAKTI MOTORS
Versus
STATE OF GUJARAT

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Appearance:
MR ANAND NAINAWATI(5970) for the Petitioner(s) No. 1
Mr SOAHAM JOSHI, AGP GOVERNMENT PLEADER(1) for the Respondent(s) No. 1,3,4,5
NOTICE SERVED(4) for the Respondent(s) No. 2

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

**Date : 04/03/2020**

**ORAL ORDER**
**(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)**

1. Rule returnable forthwith. Mr. Soaham Joshi, the learned AGP waives service of notice of rule for and on behalf of the respondents nos.1, 3, 4 and 5 respectively.

The respondent no.2 i.e.The Goods and Services Tax Council although served with the notice issued by this Court, yet has chosen not to remain present before this Court either in person and through an advocate and oppose this writ-application.

2. By this writ-application under Article 226 of the Constitution of India, the writ-applicant – a Proprietory concern through its Proprietor has prayed for the following reliefs:-

*(a) be pleased to issue a writ in the nature of Certiorari or Mandamus or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the petitioners' case and after going into the validity and legality thereof, to grant input tax credit in terms of Section 140 of CGST Act, 2017 read with Rule 117 of Central Goods & Service Tax Rules, 2017 and Section 140 of SGST Act, 2017 read with Rule 117 of Gujarat Goods & Service Tax Rules, 2017.*

*(b) be pleased to issue a Writ of Certiorari or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the petitioners' case and after going into the validity and legality thereof to order Sub-ordinate of Respondent No.2 (Respondent No.3, 4) to pass an appropriate order granting of input tax credit to the petitioners.*

*(c) be pleased to issue a Writ of Certiorari or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India to direct Nodal Officer in terms of Circular No.39/13/2018-GST dated 03.04.2018 to address the technical issue, facilitate the petitioners in filing FORM GST TRAN-1 and claim eligible credit.*

*(d) for costs of this petition;*

*(e) for such further and other reliefs as the nature and circumstances of the case may require.*

3. We need not to go into the facts in details as the controversy is in a very narrow compass. The writ-applicant tried to file the Form GST TRAN-1 on 20th December, 2017. However, on account of technical glitches i.e. failure in the GST system/error, the writ-applicant was unable to save the details relating to the CENVAT Credit and VAT Credit in the Form GST TRAN-1.

4. In such circumstances referred to above, the accumulated balance of the Cenvat Credit and the Vat Credit, which was reflecting in the return for the period ending June, 2017 filed under the erstwhile laws could not be carried forward by the writ-applicant at the time of filing

the Form GST TRAN-1 on 20th December, 2017 due to technical glitches.

5. It is the case of the writ-applicant that he took up this issue first in point of time with the respondent no.3. It appears that the writ-applicant also forwarded a letter dated 02nd January, 2018 stating that the TRAN-1 Form could not be filed within stipulated time as the GSTN 3-B data was filled with incorrect details. However, there was no response at the end of the respondent no.3.

6. The learned counsel appearing for the writ-applicant would submit that although his client tried to file the Form GST TRAN-1 within the stipulated time period i.e. 27th December, 2017, yet on account of failure in the common portal, the data could not be saved.

7. On 10th April, 2019 a Co-ordinate Bench of this Court passed the following order:-

> *"1. Mr. Anand Nainawati, learned advocate for the petitioner has invited the attention of the court to Circular No.39/13/2018-GST dated 3.4.2018 issued by the Central Board of Indirect Taxes and Customs and more particularly, paragraph 5 thereof. It was submitted that the application made to the Field Officer is required to be forwarded by the Field Officer to the Nodal Officer and hence, necessary directions are required to be issued to the Field Officer to forward the application of the petitioner to the Nodal Officer.*
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> *2. In the light of the above, Issue Notice to the respondents returnable on 1st May, 2019. Direct service is permitted qua the respondents No.3 and 4."*

8. Pursuant to the notice issued by this Court, Mr. Joshi, the learned AGP has appeared on behalf of the respondents nos.1, 3, 4 and 5 respectively. Mr. Joshi would submit that the Deputy State Tax Commissioner, Gandhinagar looked into the problem and after being convinced that it was only on account of technical glitches that the writ-

applicant was unable to file the Form GST TRAN-1, it thought fit to recommend the case of the writ-applicant positively to the Nodal Officer i.e. the respondent no.5 vide letter dated 25/02/2020. Mr. Joshi places the letter on record. The letter addressed by the Deputy State Tax Commissioner shall be kept with the record of this Court.

9. Thus, the case of the writ-applicant has already been recommended to the respondent no.5–the Nodal Officer [IT Grievance]. The recommendations at the instance of the Deputy State Tax Commissioner is positive. Now, it is for the Nodal Officer i.e.the respondent no.5 to look into the recommendations referred to above and take up the issue further with the GSTN.

10. The learned counsel appearing for the writ-applicant has brought to our notice an order No.1/2020/GST issued by the Government of India dated $7^{th}$ February, 2020. The order reads thus:-

*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)*
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*New Delhi, the $7^{th}$ 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 in super-session of Order No.01/2019-GST dated 31.01.2019, except as respects things done or omitted to be done before such super-session, the Commissioner hereby* *extends the period for submitting the declaration in FORM GST TRAN-1 till 31st 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)*

11. We are of the view that the writ-applicant is entitled to seek the benefit of the Order No.1/2020-GST, dated 7th February, 2020 referred to above. The order referred to above extends the period for submitting the declaration in Form GST TRAN-1 till 31st March, 2020 for a class of registered person, who could not submit the said declaration by the due date on account of technical difficulties on the common portal. Thus, the necessary action shall be taken on or before 30th March, 2020.

12. In such circumstances referred to above, we dispose of this writ-application with the direction to the respondent no.5 herein i.e. the Nodal Officer to undertake this exercise at the earliest. The GSTN upon receipt of the proposal from the Nodal Officer shall look into the same and take an appropriate decision in accordance with law, more particularly, keeping in mind the writ-applicant should not suffer on account of any technical glitches.

Rule is made absolute to the aforesaid extent with no order as to cost.

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

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

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