

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 2614 of 2020

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M/S RATANJYOT STEEL AND PIPES PVT. LTD.
Versus
UNION OF INDIA

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Appearance:
RAHUL L GAJERA(9399) for the Petitioner(s) No. 1,2
for the Respondent(s) No. 1,2,3,4

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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 BHARGAV D. KARIA)

1. By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs;

“(I) To issue writ of or in the nature of a mandamus or any other appropriate writ(s), direction(s) and/or pass necessary order (s) directing the Respondent(s) to allow amend or re-open GST Form-Tran 1 filed by the Petitioner on 28.08.2017 (Annex.B);

(II) To issue writ of or in the nature of a mandamus or any other appropriate writ(s), direction (s) and/or pass necessary order(s) directing the Respondent(s) to allow to carry forward in-transit credit pertaining to stock of goods held beyond 12 months from the effective/appointed date of 1.07.2017 in electronic credit ledge in terms of Section 140(3) of the Central Goods and Services Tax Act, 2017 read with Rule 117 of CGST Rules, 2017, either by way of amendment or by re-opening of GSTN portal or manually or in any other manner;

(III) To issue order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case."

2. The writ applicant No.1- is a Private Limited Company incorporated under the provisions of the Companies Act, 1956. It also registered under the Central Excise Act, 1944 and Gujarat Value Added Tax Act. The writ applicant No.1-Company is engaged in the business of trading of various goods like iron & Steel Structures, Round Bars, Alloys, Iron Steel Plates etc.

3. Thereafter, upon the Central Goods & Services Tax Act, 2017 (for short "the Act, 2017) coming into force with effect from 01.07.2017, the writ applicant No.1-Company also got registered under the Act, 2017.

4. It is the case of the writ applicants that the writ applicants computed the transitional credit in terms of the then existing sub-section (3) of Section 140 of the IGST Act without claiming the Input Tax Credit pertaining to the stock held beyond 12 months prior to coming into force of the CGST Act, 2017, i.e, for the period prior to 01.07.2016.

5. According to the writ applicants, thereafter, pursuant to the decision of this Court rendered in the case of ***Filco Trade Center Pvt. Ltd. vs. Union of India***, Special Civil Application No.18433 of 2017 with Special Civil Application No.20185 of 2017 dated 05.09.2018, the writ applicant was entitled to the credit pertaining to the stock held beyond 12 months from the effective date of 01.07.2017. The Division Bench of this Court had held as under;

"30. To sum up we are of the opinion that the benefit of credit of eligible duties on the purchases made by the

first stage dealer as per the then existing CENVAT credit rules was a vested right. By virtue of clause (iv) of sub-section (3) of [section 140A](#) such right has been taken away with Page 33 of 35 C/SCA/18433/2017 JUDGMENT retrospective effect in relation to goods which were purchased prior to one year from the appointed day. This retrospectivity given to the provision has no rational or reasonable basis for imposition of the condition. The reasons cited in limiting the exercise of rights have no co-relation with the advent of GST regime. Same factors, parameters and considerations of "in order to co-relate the goods or administrative convenience" prevailed even under the [Central Excise Act](#) and the CENVAT Credit Rules when no such restriction was imposed on enjoyment of CENVAT credit in relation to goods purchased prior to one year.

31. In the conclusion we hold that though the impugned provision does not make hostile discrimination between similarly situated persons, the same does impose a burden with retrospective effect without any justification.

32. For all these reasons we find that clause (iv) of sub-section (3) of [section 140](#) is unconstitutional. We therefore strike down the same. Petitions are allowed and disposed of."

6. The writ applicants, therefore, requested the respondents Authorities by letter dated 03.10.2018 to enable the writ applicants to claim the credit pertaining to the stock held prior to 12 months from the appointed date. Thereafter, the writ applicants made several representations but the same were not replied. The writ applicants have submitted representations dated 05.11.2018 and 30.11.2018 to the Assistant/Deputy Commissioner and with a reminder dated 24.05.2019 to the Nodal Officer to allow the writ applicant to claim in put tax credit of the stock held prior to 12 months from the appointed date.

7. The learned counsel for the writ applicants submitted

that in spite of the several reminders sent by the writ applicants to the concerned respondents, requesting them to allow the writ applicants to carry forward in put tax credit pertaining to the stock held prior to 12 months from the appointed date, the same are not replied by the respondents authorities.

8. In such circumstances, referred to above, the respondents are hereby directed to consider the representation of the writ applicants at the earliest keeping in mind the ratio laid down by this Court in the case of *Filco Trade Center Pvt. Ltd .(supra)*. Such exercise shall be completed within a period of four weeks from the date of the receipt of the writ of this order.

9. With the above, this writ application is disposed of.

Direct service is permitted.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

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