

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 3933 of 2020**

FOR APPROVAL AND SIGNATURE:

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

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

RSK INDUSTRIES PRIVATE LIMITED
Versus
UNION OF INDIA

Appearance:

MR. APURVA N MEHTA(7202) for the Petitioner(s) No. 1
VIJAY H PATEL(7361) for the Petitioner(s) No. 1
MR ANKIT SHAH(6371) for the Respondent(s) No. 3
NOTICE NOT RECD BACK(3) for the Respondent(s) No. 1,2

**CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA
Date : 04/03/2020**

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Rule, returnable forthwith. Mr.Ankit Shah, the learned advocate waives service of Notice of rule on behalf of the respondents.

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

"7(A) YOUR LORDSHIPS may be pleased to admit and allow this Petition.

(B) YOUR LORDSHIPS may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction directing the Ld. Respondents to open the online portal so as to enable the Petitioner to file the revised Form GST TRAN - 1 electronically which the Petitioner could not do for the reasons beyond its control due to glitches in the system of the Respondents.

(C) Alternatively, YOUR LORDSHIPS may be pleased to issue writ of Mandamus or any other appropriate writ, order or direction directing the Ld. Respondents to accept the manually filed revised Form GST TRAN - 1.

(D) Such other and further reliefs as may be deemed fit in the facts and circumstances of the case may kindly be granted."

3. The facts giving rise to this petition may be summarized as under :-

3.1. The petitioner is a Private Ltd. Company incorporated under the provisions of the Companies Act, 1956. The petitioner is engaged in the business of manufacturing and trading of various items of iron and steel across India. The petitioner was registered under the provisions of Central Excise Act, 1944 (for

short the "Act 1944") and Gujarat Value Added Tax Act, 2003 (for short the "VAT Act 2003").

3.2. After coming into force of Central Goods and Services Tax Act, 2017 (for short "the Act 2017"), the petitioner filed Form GST TRAN-1 for the purpose of taking into its electronic credit ledger, an amount equivalent to unutilised CENVAT Credit of Excise duty & Service tax as well as the Input Tax Credit under the VAT Act, 2003 as per the provisions of Section 140 of the Act, 2017 read with Rule 117 of the Central Goods and Service Tax, Rules 2017 [for short the "Rules 2017"].

3.3. It is the case of the petitioner that the petitioner provided all the details in Column 5(a) of Form GST TRAN-1 correctly except CENVAT Credit admissible as Input Tax Credit (ITC), wherein, due to inadvertence, the petitioner filled in "ZERO" instead of amount of the balance CENVAT Credit/carried forward CENVAT Credit amounting to Rs.8,58,373/- pertaining to CENVAT Credit of excise duty and Rs.5,97,397/- pertaining to the input tax credit of service tax.

3.4. The petitioner therefore, noticing that an error had crept in at the time of filing of Form GST TRAN-1 dated 15.12.2017, attempted to file revised Form GST TRAN-1. However, the petitioner could not upload such Form as revise button/link was not reflected on the screen of the common portal, when the petitioner tried to log in to revise Form GST TRAN-1. The petitioner, therefore could not correct the mistakes committed by it, at the time of filing of original Form GST TRAN-1.

3.5. The petitioner, thereafter, made a representation on 16.12.2017 with regard to the difficulty of the petitioner for not being able to upload revised Form GST TRAN-1 before the GST help desk by email. The petitioner therefore, could not claim credit of Input Tax Credit/CENVAT Credit to the tune of Rs.14,55,770.

3.6. The petitioner, thereafter, preferred an application dated 27.04.2018 before the respondent No.3, Superintendent CGST, Range-1, Division Bhavnagar-1 indicating the technical glitch/error faced by the petitioner to revise Form GST TRAN-1.

3.7. In absence of any response, the petitioner made various representations before the respondents-authorities.

3.8. The case of the petitioner was considered during the 4th meeting of IT Grievance Redressal Committee held on 12.02.2019. The representation of the petitioner was rejected on the ground that the petitioner had successfully filed Form GST TRAN-1 and there was no technical error was found.

3.9. It is the case of the petitioner that the Redressal Grievance Committee did not consider the problem faced by the petitioner to upload the revised Form GST TRAN-1. Though the petitioner was entitled to revise such Form till 27.12.2017 and in fact when the petitioner tried to avail such option, but, it could not do so due to non-availability of link on the common portal of GSTN. The petitioner has, therefore, filed this petition with the aforesaid prayers.

4. Mr. Apurva N. Mehta, the learned advocate for the petitioner submitted that the petitioner was entitled to file revise Form GST TRAN-1 on or before

27.12.2017. The petitioner by email dated 16.12.2017 informed to the help desk that the petitioner was unable to file revised Form GST TRAN-1 to correct the inadvertent mistake committed by the petitioner by showing "ZERO" in CENVAT Credit admissible at ITC in Column 5(a) of the Form GST TRAN-1 due to technical error.

4.1. It was submitted that the petitioner is entitled to get credit of the CENVAT/Input Tax Credit as per the provisions of Section 140 of the Act, 2017 read with Rule 117 of the Rules, 2017.

4.2. The learned advocate for the petitioner also relied upon the Order No.01/2020-GST dated 07.02.2020 issued by the Government of India, Ministry of Finance, (Department of Revenue), [Central Board of Indirect Taxes and Customs], to submit that now the portal for uploading Form GST TRAN-1 is again opened till 31st March 2020. It was, therefore, submitted that necessary directions may be issued to the respondents to consider the case of the petitioner for its claim of Input Tax Credit under the provisions of the Act, 2017 so as to enable the

petitioner to file revise Form GST TRAN-1 to claim CENVAT/Input Tax Credit of Rs.14,55,770/-.

5. On the other hand, Mr.Ankit Shah, the learned advocate appearing for the respondents submitted that once the original Form GST TRAN-1 is submitted by the petitioner, the same cannot be revised and therefore, the petitioner was not permitted to file revise Form GST TRAN-1. The petitioner is not entitled to or not eligible to carry forward the amount of CENVAT/Input Tax Credit as the petitioner has shown "ZERO" in the Column 5(a) of the Form GST TRAN-1 uploaded by it.

5.1. Learned advocate for the respondents further relied upon the rejection of the application of the petitioner by IT Grievance Redressal Committee as it was found that the petitioner has successfully filed Form GST TRAN-1 and no technical error was found.

6. Having heard the learned advocates for the respective parties and having gone through the materials available on record, it is not in dispute that the petitioner is entitled to carry forward CENVAT/Input Tax Credit to the tune of Rs.14,55,770/-

as per Form E.R.-1 under the provisions of the Act, 1944 as well as the Act, 2017. It is also not in dispute that the petitioner uploaded Form GST TRAN-1 erroneously showing "ZERO" balance for CENVAT Credit admissible as Input Tax Credit. Therefore, as per the provisions of Section 140 of the Act, 2017 read with rule 117 of Rules, 2017, the petitioner is entitled to carry forward the CENVAT Credit. The IT Grievance Redressal Committee of the respondent, however, did not consider the case of the petitioner that petitioner could not upload the revised Form GST TRAN-1 to claim the amount of Rs.14,55,770/- as Input Tax Credit due to technical glitch.

7. In the opinion of this Court, the respondents have failed to consider the aspect of the technical glitch to reject the claim of the petitioner on the ground that there was no technical error when the petitioner uploaded the Form GST TRAN-1 without considering the fact that the petitioner could not upload revised Form GST TRAN-1 within the prescribed date of 27.12.2017.

8. The Central Board of Excise and Custom has issued the Order No.01/2020-GST dated 07.02.2020 extending the period for submitting the declaration in the form of GST TRAN-1 till 31st March 2020, which reads thus :

“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 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 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.”

9. In view of the aforesaid order, the petitioner is also entitled to get one more chance to submit the declaration in Form GST TRAN-1 as the petitioner could not submit the revised Form GST TRAN-1 as the petitioner could not upload the same before the due date of 27.12.2017 on account of technical

difficulties on the common portal.

10. In view of the foregoing reasons, the respondents are hereby directed to consider the claim of the petitioner for carry forward of Input Tax Credit of Rs.14,55,770/- so as to enable the petitioner to take advantage of the order dated 07.02.2020 to upload the revised Form GST TRAN-1 on or before 31.03.2020. Such exercise shall be completed by the petitioner on verification of the claim of the petitioner for carry forward of the Input Tax Credit of Rs. 14,55,770/- within a period of two weeks from the date of receipt of writ of this order.

11. The petition is accordingly disposed of in view of above directions. Rule is made absolute to the aforesaid extent with no order as to costs.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

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