

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 12297 of 2019**=====
KRISHNA OLEO CHEMICAL INDIA LIMITED

Versus

UNION OF INDIA
=====

Appearance:

MR AMAR N BHATT(160) for the Petitioner(s) No. 1,2

MR KUNAL P VAISHNAV(5111) for the Petitioner(s) No. 1,2

MR CHINTAN DAVE, AGP(1) for the Respondent(s) No. 2,3

MR NIRZAR S DESAI(2117) for the Respondent(s) No. 1,4
=====CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA**Date : 26/02/2020****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1 Rule returnable forthwith. Learned advocate Mr. Nirzar Desai waives service of notice of rule for and on behalf of respondents Nos.1 and 4. Learned A.G.P. Mr. Chintan Dave waives service of notice of rule for and on behalf of respondents Nos.2 and 3.

2 Having regard to the controversy in narrow compass, with the consent of the learned advocates for the parties, the matter is taken up for final hearing.

3 By this petition under Article 226 of the Constitution of India, the petitioners have prayed for the following reliefs:

“(A) issue appropriate writ to command the respondents to consider the physical copy of Form GST TRAN – 1 sent on 30/1/2019 at Annexure A hereto and to give credit to the petitioner No.1 with respect of input credit (CENVAT Credit) of an amount of Rs.1,59,55,594/- and restrain the respondent from cancelling the GST registration and command the respondent to square off the amount of Rs.1,59,55,594/- of CENVAT Credit towards the CGST liability, if any.

Or in the alternative

(AA) command the respondents to open the Electronic Portal to enable the petitioners to file GST TRAN – 1 online.

(B) During the pendency and final disposal of this petition.

i) direct the respondents to consider the physical copy of form GST TRAN – 1 sent on 30/1/2019 at Annexure A hereto and to give credit to the petitioners with respect of input credit (CENVAT Credit) of an amount of Rs.1,59,55,594/-.

ii) direct the respondents to open the Electronic Portal to enable the petitioners to file GST TRAN – 1 online.

iii) restrain the respondents from taking any coercive action against the petitioners pursuant to notice dated 13/06/2019 from raising demand ignoring the amount of CENVAT Credit of Rs.1,59,55,594/-.

iv) restrain the respondent from cancelling the GST registration and direct the respondent to square off the amount of Rs.1,59,55,594/- of CENVAT Credit towards the CGST liability, if any.

(D) award cost of this petition.”

4 The petitioner No.1 is a limited company registered under the Companies Act and has filed this petition through its Director. The petitioners had closing carried forward CENVAT balance as on 30th June

2017 amounting to Rs.1,59,55,594/-.

5 In view of coming into force the Central Goods and Services Tax Act, 2017 (for short, 'the CGST Act, 2017'), the petitioners were entitled to carry forward the CENVAT credit in view of transitional provisions of Section 140 of the CGST Act, 2017. Under Rule 117 of the CGST Rules, 2017, the petitioners were entitled to such input credit and were required to submit the declaration electronically in form TRAN 1 within ninety days from the appointed day i.e. 1st July 2017 subject to further extension which may be granted by the Commissioner on recommendations of the GST Council for submitting of such form TRAN-1.

6 It is the case of the petitioners that after the period for submitting TRAN 1 was extended vide order No.9/2017-GST dated 15th November 2017 upto 27th December 2017, the petitioners tried to log in form TRAN-1 on 14th November 2017, 20th December 2017 and 25th December 2017, but the petitioners could not upload TRAN-1 due to technical glitch on the online portal.

7 It is the case of the petitioners that whenever petitioner No.2 tried to upload form TRAN-1, a message was received from the portal of the respondents that the filing of declaration in form TRAN-1 is not available as the due date was over.

8 The petitioner No.2, therefore, sent complaint on 3rd December 2018 to the Nodal Officer of the respondents. It was again sent by reminder dated 30th January 2019 along with manually submission of form TRAN-1. The petitioners were however not granted the credit of CENVAT under the CGST Act, 2017.

9 It is the case of the petitioners that thereafter, petitioner No.2 again tried to upload the form TRAN-1, but it could not do so as the due date for upload of the electronically form TRAN-1 was already over.

10 According to the petitioners, the Nodal Officer, Office of the Commissioner of CGST Audit, gave final audit report on 19th June 2019 for the audit period for financial year 2014-15 to 2017-18 (upto June 2017), under which only an amount of Rs.61,605/- was to be paid by the petitioners. The petitioners, therefore, paid such amount. The petitioners are, therefore, entitled to CENVAT credit as per register ER-1.

11 Learned advocate for the petitioners submitted that there is no fault on the part of the petitioners so as to upload form TRAN 1 and only due to technical glitches on the part of the respondents, the petitioners could not upload form TRAN-1. Learned advocate for the petitioners 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 6th September 2019 to contend that the respondents may be directed to permit the petitioners for uploading the declaration in form TRAN-1 so as to enable the petitioners to claim credit of CENVAT as per Section 140 of the CGST Act, 2017. It was further pointed out that the review applications filed by the respondents in the aforesaid writ petition were also rejected vide order dated 14th February 2020.

12 Learned advocate for the petitioners also relied upon the order No.01/2020-GST dated 7th February 2020 of Central Board of Indirect Taxes and Customs with regard to extension of time limit for submitting the declaration in form GST TRAN 1 under Rule 117(1A) of the Central

Goods and Services Tax Rules, 2017, which 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 7th 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 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)”

13 It was, therefore, submitted that respondents may be directed to permit petitioners to upload form TRAN-1 to avail carry forward of CENVAT credit balance as on 30th June 2017.

14 On the other hand, learned advocates for the respondents submitted that it is true that the petitioners could not upload form TRAN-1. However, it was submitted that necessary directions may be given to the respondents to permit the petitioners to upload the declaration in form TRAN-1 in view of aforesaid order dated 7th February

2020 issued by the Central Board of Indirect Taxes and Customs extending time period to upload form TRAN-1.

15 Having heard learned advocates of respective parties and having gone through materials on record, only question which arises in this petition is whether the petitioners are entitled to carry forward CENVAT Credit balance as on 30th June 2017 under Section 140 of the CGST Act, 2017 in absence of uploading form TRAN-1 due to technical glitches. This question is no more *res integra* in view of decision of Coordinate Bench in case of **Siddharth Enterprises (supra)** as well as order passed in review applications. It is held in aforesaid judgement as under:

“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 1st 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.”

16 In review applications filed by respondents, it is held as under:

“5. Having heard the learned counsel appearing for the parties and having perused the materials on record, we find substance in the submissions made by Mr. Shraff, the learned counsel for the respondents herein. The applicants have relied on the case of Willowood Chemicals Pvt. Ltd. (supra). In that case, the vires of Section 164 of the CGST Act, 2017 was challenged and it was prayed that the respondents be directed to allow the petitioners to carry forward CENVAT credit in the electronic credit ledger, available as on 30th June, 2017 in terms of Section 140(3) of the Central Goods and Services Act, 2017, wherein the co-ordinate Bench had observed that the time limit provision contained in Rule 117 of the CGST Rules, 2017 is annihilated and cannot be seen as merely technical in nature and the petition was dismissed. While in the case of Jay Chemicals Industries Ltd. (supra), the coordinate Bench had relied on the judgment of Willowood Chemicals Pvt. Ltd. (supra) and stated that the Bench do not find any scope for directing the respondents to allow the petitioners to correct the TRAN-1 declaration already made. It was also observed that limited extension has been granted to cover cases where genuine hardships were felt in uploading said declaration due to technical glitches. In the said case, the writ applicant had filed the writ application for declaring Rule 117 of the CGST Rules, 2017 and form GST TRAN-1 as ultra vires to Section 140(5) and Section 164 of the CGST Act, 2017 and offend Article 14, 19(1)(g), 265 and 300A of the Constitution of India.

5.1 While in the case on hand, this Court has not declared the said Rule 117 of the CGST Rules, 2017 neither this Court has ordered the respondents to carry forward CENVAT credit beyond the time limit, but in the case on hand, the respondents herein had tried to upload form GST TRAN-1, but it could not be filed on account of technical glitches in terms of poor network connectivity and other technical difficulties at common portal. Under the circumstances, this Court has gone into the question that in such circumstances what would be the remedy if a person who tries to follow Rule 117 of the CGST Rules, 2017 but, without there being any

fault on his side he could not upload the form due to technical glitches. Therefore, this Court has followed the judgement in the case of Filco Trade Centre Pvt. Ltd. (supra), wherein, after relying on number of judgements of the Apex Court, the coordinate Bench of this Court had followed the consistent findings of the Apex Court and held that the right accrued to the assessee on the date when the paid tax on the raw materials or the inputs and that right would continue by way of CENVAT credit. The CENVAT credit is therefore infeasible. Following the said principle, this Court had directed the applicants herein – original respondents to permit the respondents herein – original petitioners to allow filing declaration form in 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 GST Act. The co-ordinate Bench has also observed in paragraph 32 as under :

“32. For all these reasons we find that clause (iv) of subsection (3) of Section 140 is unconstitutional. We therefore strike down the same. Petitions are allowed and disposed of.”

Thus, when the co-ordinate Bench had already declared clause (iv) of subsection (3) of Section 140 as unconstitutional, we do not have any hesitation to declare Rule 117 of the CGST Rules, 2017 for the purpose of claiming transitional credit as procedural in nature and should not be construed as mandatory provision. In the two judgments of the Coordinate Bench, which are relied on by the applicant, the above ratio of the Apex Court is not followed and, therefore, we are of the view that the judgment in case of Filco Trade Center Pvt Ltd. vs. Union of India reported in 2018 (17) G.S.T.L. 3 (Guj.) would be applicable to the facts of the present case. In our order, we have already discussed the judgment of the Eicher Motors Ltd. vs. Union of India reported in 1999 (106) ELT 3 (SC) and in the judgment rendered in the case of Collector of Central Excise, Pune vs. Dai Ichi Karkaria Ltd. reported in [1999 (112) ELT 353 SC], which are also relied on by the Coordinate Bench in the case of Filco Trade Center Pvt Ltd. (supra).”

17 Thus, dictum of law as declared in above decision would be applicable to the facts of this case also as the petitioners are not be able to upload form TRAN-1 due to technical glitches.

18 In view of the foregoing reasons, the respondents are directed to permit the petitioners to upload the declaration in form TRAN-1 and as

per order dated 7th February 2020 passed by the Central Board of Indirect Taxes and Customs, the petitioners will be entitled to upload Form TRAN-1 before 31st March 2020 to claim credit of CENVAT under Section 140(3) of the CGST Act, 2017. Such exercise should be completed within two weeks from the date of receipt of this order.

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

