

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 18738 of 2018**

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POWER PALAZZO PVT LTD

Versus

UNION OF INDIA THROUGH COMMISSIONER OF CENTRAL GOODS AND
SERVICES TAX

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Appearance:

UCHIT N SHETH(7336) for the Petitioner(s) No. 1,2

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

MR ANKIT SHAH(6371) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**

and

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

1 By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:

“21A. This Hon'ble Court may be pleased to issue a writ of mandamus directing the learned respondents to act on the representations made by the petitioners and grant transitional input tax credit under Section 140 of the CGST Act as claimed by the petitioners in GST TRAN 1;

B. Pending notice, admission and final hearing of this petition, this Hon'ble Court be pleased to direct the learned respondents to act on the representations made by the petitioners and grant transitional input tax credit under Section 140 of the CGST Act as claimed by the petitioners in GST TRAN 1;

C. Ex parte ad interim relief in terms of prayer B may kindly be granted;

D. Such further relief(s) as deemed fit in the facts and

circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioners shall forever pray.”

2 On 9th October 2019, a Coordinate Bench of this Court passed the following order:

“1. Mr. Uchit Sheth, learned advocate for the petitioners, submitted that the respondents do not dispute the fact that the petitioner is entitled to transitional input credit. It was submitted that the Form GST TRAN1 was filed by the petitioner within the stipulated time and even that position is not disputed. It was contended that tax credit is a vested right and unless it is established that the petitioner has failed to claim it within the prescribed time, the respondents are not justified in denying the claim for transitional input credit. According to the learned advocate, such cases are required to be decided in a rational manner and the Notification dated 10.09.2018 issued by the Government of India is required to be read in a purposive manner. However, the IT Grievance Redressal Committee has considered only those defined errors showing technical glitch, but has not considered other errors.

2. Referring to the minutes of the 4th meeting of IT Grievance Redressal Committee held on 12th February, 2019, it was pointed out that the Committee had categorised the errors on account of technical/system issues and cases where there was no evidence of technical/system issues and has allowed filing of Form GST TRAN1 only in those cases where, according to it, there were technical/system issues.

3. Reliance was placed upon the decision of the Supreme Court in the case of *Eicher Motors Ltd. v. Union of India*, 1999 (106) E.L.T. 3 (SC), for the proposition that if on the inputs the assessee had already paid the taxes on the basis that when the goods are utilised in the manufacture of further products as inputs thereto, then the tax on these goods gets adjusted which are finished subsequently. Thus, a right accrued to the assessee on the date when it paid the tax on the raw materials or the inputs and that right would continue until the facility available thereto gets worked out or until those goods existed.

4. Reliance was also placed upon the decision of the Supreme Court in the case of *Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd.*, 1999 (112) E.L.T. 353 (SC), for a similar proposition.

5. It was submitted that therefore, once it is established that the petitioner had tried to file the Form GST TRAN1, the respondents are not justified in denying the petitioner the benefit of transitional input credit merely on the ground that the error was not a defined one.

6. In response to the submissions made by the learned advocate for the petitioner, Mr. Ankit Shah, learned senior standing counsel for the

respondent No.1, invited the attention of the court to the Minutes of the 4th meeting of the IT Grievance Redressal Committee (ITGRC) held on 12.02.2019, to submit that the Committee has not rejected the case of the petitioner, but has observed that in such cases, the procedure laid out under circular dated 03.12.2018 of CBIC seemed applicable, and proper prescribed process was required to be followed and that such cases should not have been forwarded to the GSTC Secretariat. It was submitted that therefore, it is not as if the petitioners claim has been rejected; however, the issue is required to be decided by the concerned Nodal Officer as per the procedure laid down in the Circular dated 03.12.2018.

7. Ms. Maithili Mehta, learned Assistant Government Pleader appearing for the respondent No.2, submitted that the representation made by the petitioner is still pending consideration before the respondent No.2.

8. In view of the above, issue Rule, returnable on 13.11.2019. The decision, if any, taken by the respondent No.2 on the representation made by the petitioner shall be placed on the record of this court on or before the returnable date, if available. To be listed on the admission board.”

3 Thereafter, this Bench passed the following order dated 19th February 2020:

“1. Mr.Ankit Shah, the learned standing counsel appearing for the Union of India and Mr. Chintan Dave, the learned Assistant Government Pleader appearing for the State jointly make a statement that the issue will be resolved without fail by next date of hearing.

2. We do not see any good reason why this issue should not be resolved.

3. Post this matter on 26.02.2020 on top of the board.

4. We hope that, we are not constrained on the next date of hearing to pass a harsh order.”

4 Today, when the mater is taken up for further hearing, a statement is made by Mr. Chitan Dave, the learned A.G.P. appearing the State respondent that the Nodal Officer has addressed a letter to the authority In-charge of the portal stating that the claim of the writ applicant to carry forward the Cenvat credit is justifiable and for that purpose, the portal be opened to enable the writ applicant to file his

TRAN 1. Mr. Chintan Dave places on record the letter in writing sent to the authority In-charge of the portal. The same shall be kept with the record of this case.

5 In view of such statement being made by the learned A.G.P., no further adjudication of this writ application on merits is now necessary. Let this exercise be undertaken at the earliest and the same shall be completed within a period of two weeks from the date of receipt of the writ of this order. This petition stands disposed of accordingly. Direct service is permitted.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

CHANDRESH

