* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 29.05.2020
Pronounced on: 16.06.2020

\+ W.P.(C) 13151/2019

SKH SHEET METALS COMPONENTS ..... Petitioner

Through: Mr. Dharnendra K. Rana, Advocate with Ms. Anshika Aggarwal, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Sreemithun, Advocate for UOI.
Mr. Harpreet Singh, Standing Counsel for GST.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J

1. The Petitioner has invoked Article 226 of the Constitution of India for seeking a writ of mandamus directing the Respondents to allow it to avail the short transitioning of Input Tax Credit ('ITC') amounting to Rs. 5,51,33,699/- by either updating the electronic credit ledger at their back end,in accord with the details of credit submitted by the Petitioner or allowing them to revise the Form GST TRAN-1, in conformity with the returns filed under the existing laws that stand repealed by the Central Goods and Service Tax Act, 2017 ("CGST Act").

BRIEF FACTUAL BACKGROUND

2. Petitioner- SKH Sheet Metals Components Private Limited, set up its unit at Pune, Maharashtra for manufacture of final products and sale to OEMs. The indirect tax structure prevailing in India, prior to 1st July, 2017, comprised of multifarious duties and taxes imposed by the Centre as well as States. Excise duty was levied under Central Excise Act, 1994 ('Excise Act') on manufacture of excisable goods; service tax was imposed under Finance Act, 1994 ('Finance Act') on provision of services in the taxable territory. Similarly, sale of goods was exigible to Value Added Tax ('VAT') imposed under respective State VAT enactments and Central Sales Tax ('CST') under Central Sales Tax Act, 1956 ('CST Act'), depending on whether the goods were sold intra-state or inter-state. [hereinafter the legislations referred hereinabove are being collectively referred to as 'Existing Laws']. In this regard, Petitioner obtained registration with the jurisdictional authorities under various legislations listed hereinabove. It also availed CENVAT credit of specified duties and taxes paid on inputs, capital goods and input services in terms of Cenvat Credit Rules, 2004 ('Credit Rules') and input tax credit of VAT paid on purchases in terms of Maharashtra VAT Act, 2002 ('MVAT Act'). Petitioner periodically filed returns by way of forms specified under the above-noted legislations, and declared the details of input balance of credit, credit availed during the return period, and closing balance of credit available for carry forward for the next period. For the period ending 30th June, 2017, the closing balance of credit available for carry forward, as declared by the Petitioner, reflects the figures tabulated hereunder:

Return	Amount (Rs.)
ER-1	3,86,54,605/-
ST-3	1,64,79,081/-
Form 231	1,01,24,382/-
TOTAL	**6,52,58,081/-**

3. The indirect tax regime had its watershed moment with the advent of the Goods and Service Tax, which has become operational by way of several enactments [hereinafter referred as 'GST laws'], w.e.f. 1st July, 2017 ('Appointed Date') and existing laws stand repealed. The GST laws framed by the parliament and the state legislatures, recognize the fact that taxpayers had ITC under the existing laws, and provide for elaborate transitional arrangements to save the pending as well future claims relating to existing law made before, on or after the appointed day. In order to achieve this objective, GST laws permit the registered persons to migrate the amount of CENVAT Credit that was carried forward in the returns under the existing laws in the electronic credit ledger under GST laws.

4. Petitioner asserts that it is entitled to transitional credit of Rs. 6,52,58,081/- comprising of Central Excise Cenvat credit of Rs. 3,86,54,605/-, Service Tax Cenvat credit of Rs. l,64,79,081/- and Input MVAT credit of Rs. l,01,24,382/. In order to avail the credit in the electronic

credit ledger under the GST laws, on 27th August, 2017, much before the last date specified by the Central Government, the Petitioner filed a Form prescribed for this purpose, known as 'GST TRAN-l'. However, on submission of the said Form, Petitioner realized that as against the total credit of Rs. 6,52,58,081/-, only Rs. l,01,24,382/- was reflected on the common GST portal. The CENVAT credit of Rs. 5,51,33,6991/- comprising of Central Excise and Service Tax of Rs.3,86,54,605/- and Rs.1,64,79,0811/- respectively was not displayed in the electronic credit ledger.

5. Vide email dated 9th October, 2017, Petitioner brought the mismatch to the notice of the Respondents, and the difficulty faced in utilization of the entire credit, since the Cenvat under Central Excise and Service Tax had not been replicated in the Electronic Credit Register. Respondents suggested that since the common portal itself enables the taxpayers to make necessary amendments, Petitioner could avail the said option to rectify the error. Around this time, Respondents issued Order number 9/2017 – GST, extending the date of filing for GST TRAN-1 till 27 December 2017. Petitioner claims that it filed a revised declaration in the nature of Form GST TRAN-I on 27th December, 2017 and reflected the correct figures under column 5(a) of the Form, however, the amount was still not transferred to the electronic credit register and was shown as "blocked credit". Petitioner then registered a complaint dated 5th February, 2018, with the GST helpdesk. GST helpdesk duly acknowledged the complaint, generated 'request ID' and informed the Petitioner that they were working on the issue and the status thereof shall be updated and intimated.

6. Thereafter, the Petitioner vide letter dated 6th February, 2018, made further representations to the Assistant Commissioner of CGST as also to Principal Commissioner of CGST, Pune Commissionerate. However, the said complaint did not translate into any positive outcome. In the meantime, CBIC issued a circular granting relief to taxpayers who had faced IT glitches at the stage of filing original or revised return on the Goods and Service Tax Network (' GSTN ') portal. Petitioner worked towards availing the benefit of the said circular and submitted a representation dated 12th April, 2018 to the Deputy Commissioner of CGST as also Principal Commissioner of CGST, but this attempt also turned out to be futile. Subsequently, Respondents issued a trade notice No. 33/2018 dated 19th April, 2018 intimating about the formation of IT Grievance Redressal Committee ('ITGRC') for the purpose of resolution of difficulties faced by taxpayers in filing returns Forms. In order to avail the benefit of the said notice, Petitioner, yet again pursued the matter with the Respondents and vide email dated 24th April, 2018, submitted another representation in the prescribed format. In response thereto, the Office of Principal Commissioner, CGST vide email dated 25th April, 2018 sought clarification on various points which were promptly provided on 26th April, 2018. The receipt of the said communication was acknowledged by the authorities vide email dated 4th May, 2018, stating that "*it is acknowledged that the grievance received by you to this office has been forwarded to the Nodal Officer, GSTN, to take necessary action against your complaint at their end".* However, the aforesaid representations also did not bring forth any favorable outcome. Nevertheless, Petitioner continued to follow up with the Respondents,

seeking rectification of the problem. Petitioner's AR also made personal visits to the Office of the Principal Commissioner of CGST and each time he was informed that the issues raised by the Petitioner were being examined and shall be resolved after due and proper verification.

7. When all the efforts made by the Petitioner failed, it filed a Writ Petition No. 712/2018 before Bombay High Court. During the course of hearing, the counsel representing the Respondents informed the Court that GST Council in its 32nd meeting had resolved that ITGRC which was originally mandated to consider cases relating to technical glitches, would now also consider cases involving human errors and it would be appropriate for the Petitioner to make a representation before the Jurisdictional Commissioner who upon examination and satisfaction of the grievance of the Petitioner, shall forward the case to Respondent No. 2 for undertaking appropriate action. The note produced by the Respondents *inter alia* reads as under:

> *"Petitioners can make a representation to the jurisdictional Commissioner about the issue. The same will be examined and the jurisdictional Commissioner if prima facie satisfied, will forward the same to the Secretariat GST Council with a copy to ITGRC. A decision will be taken at that level and communicated to the Petitioners."*

8. After considering the contents of the note and the minutes of 32nd GST Council meeting, Bombay High Court vide order dated 27.02.2019 disposed of the petition with direction to the Petitioner to file a representation before concerned Authorities in terms of the 32nd GST Council meeting. The said is extracted hereunder:

> "*1.* ***In the light of the note placed on record by Shri Mishra***

> ***annexing therewith the Office Memorandum dated 19th February, 2019 issued by the Government of India, Goods and Service Tax Council seeking to address certain non technical issues, namely, human errors and putting in place a mechanism to take corrective measures, we do not think anything survives in this writ petition****. It is disposed of.*
> *2. However, the learned counsel for the petitioner brings to our notice that the cut-off date mentioned in this Office Memorandum is 25th February, 2019 whereas this Office Memorandum is dated 19th February, 2019. This period is hopelessly inadequate for accessing the authorities and by emode.*
> ***On instructions, Shri Mishra says that if the petitioner forwards its requests or grievances within a period of one week from today, the concerned authorities will attempt to redress them and will not throw them out only on the ground that they are received beyond the cut-off date.*** *The statement made by Shri Mishra, on instructions, is accepted as an undertaking to this Court*."
>
> (Emphasis Supplied)

9. Accordingly, Petitioner filed yet another representation before Respondent No. 4. This representation was acknowledged by the Respondents vide communication dated 13th May, 2019 intimating him that representation had been forwarded to Respondent No. 3, vide letter dated 14th March, 2019. Ultimately, vide letter dated 12th July, 2019 the case of the Petitioner was rejected by ITGRC and the prospect and possibility of a resolution were finally put to rest. The relevant portion of the letter is extracted hereinbelow:

> *"Your representation pertaining to TRAN-1 credit was forwarded to this office by the Nodal Officer, CGST, Pune-I Commissionerate vide e-mail dated 27/04/2018. It was submitted to the IT Grievance Redressal Committee (ITGRC) for*

appropriate decision in the matter. As per the decision received from ITGRC, your case has not been approved. The decision has already been communicated by this office to the Nodal Officer, CGST, Pune-I Commissionerate vide e-mail dated 20/03/2019."

10. Since the letter rejecting the Petitioner's case did not elucidate any reasons for rejection, the Petitioner vide letter dated 1st August, 2018 requested Respondents to provide them reasons for denial. No response was received to the said letter. Petitioner then filed an RTI application requesting for the reasons for rejection. This request was turned down in the following manner:

"This information sought under RTI does not fall under definition of Information transitional credit as per section 2(f) of the RTI Act, 2005. The CIC vide its decision No. CIC/POWER/A/2017/105911 dated 01.12.2017 held that '...RTI Act is not the proper law for redressal of grievances and that there are other appropriate fora for resolving such matters... '

Hence, no further action is required in the matter."

11. In the above factual background, Petitioner has filed the present writ petition, invoking the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

SUBMISSIONS OF THE PARTIES

12. Learned counsel for the Petitioner narrated the factual background and argued that the Respondents have acted in a most unreasonable manner by denying the Petitioner benefit of transitional provision without any cogent reason. Petitioner is seeking transition of ITC that had accrued and vested in its favour under the erstwhile regime. Petitioner had acted promptly and

filed the statutory GST TRAN-I form within the specified time. However, since there was a bona fide error in filling the same, the Petitioner filed a revised return correcting the same and yet, the entire credit is still not exhibited in the electronic credit ledger. The short transitioning is due to some problem at Respondent's end. The issue was flagged, but was not rectified on account of frivolous and baseless reasons. He further argued that Petitioner has been tirelessly following up with the Respondent and submitted a litany of complaints and representations, however all of those have fallen on deaf ears. The conduct of the Respondents reflects their narrow mindset and attitude in resolution of troubles faced by taxpayers. They are only interested in finding ways and means to deny the Petitioner the benefit which is legitimately due to it. Learned counsel for the Petitioner also relied upon several decisions such as ***Blue Bird Pure Private Limited*** (Delhi High Court) W.P.(C) 3798/2019, ***Adfert Technologies Private Limited*** (P&H High Court) CWP No. 30949/2018(O&M), ***Vertiv Energy India Private Limited*** (Delhi High Court) W.P.(C) 10811/2018, ***Lease Plan India Private Limited*** (Delhi High Court) W.P.(C) 3309/2019, ***Godrej & Boyce Manufacturing Company Limited*** (Delhi High Court) W.P.(C) 8075/2019, ***JakapMetind Private Limited*** (Gujarat High Court) R/Special Civil Application No. 19951/2018 and ***Siddharth Enterprises*** (Gujarat High Court) R/Special Civil Application No. 5758/2019 to argue that the several Courts have permitted the similarly situated taxpayers to file the Form GST TRAN-1 beyond stipulated period of time. This Court has also come to the rescue of several taxpayers who had faced difficulties in filing the statutory form GST TRAN-1 on the GSTN portal, within the period specified. The Courts have in fact, gone a step further and extended benefit even to those

taxpayers, who may not have faced 'technical glitch on the portal' but were otherwise prevented in filing the TRAN-1 form on account of certain human errors or factors and reasons which were beyond their control. In this regard, learned counsel for the Petitioner specifically relied upon the decisions of this Court in the case of ***M/s Blue Bird Pure Pvt. Ltd. vs. Union of India &Ors.*** 2019 SCC OnLine Del 9250 as also the case of ***A.B. Pal Electricals Pvt. Ltd. v. Union of India*** [W.P.(C) 6537/2019] decided vide judgment dated 17th December, 2019. The above-noted cases, were not strictly covered by the concept of "technical glitches", however, considering the fact that GST system was still in a trial and error phase as far as its implementation is concerned, Court agreed to the fact that certain taxpayers were having genuine difficulties in filing returns and claiming input tax credit through GSTN portal and allowed filing of the TRAN-1 Form beyond the stipulated date. Learned Counsel also relied upon the detailed decision rendered by this Court recently in a batch of cases titled as ***Brand Equity Treaties Ltd. And Ors. v. Union of India***, [2020] 116 taxmann.com 415 (Delhi). He argued that Petitioner's case is identical to one of the cases decided in the said batch i.e. ***Micromax Informatics Ltd. v Union of India*** [WP(C) No. 196/2019], where the Court had taken note of facts similar to this case and allowed belated filing of TRAN-1. In the said case, the Court also held that Rule 117 of the GST Rules is directory in nature in so far as it prescribes the time limit for transitioning of credit and it cannot result in forfeiture of rights of taxpayers, if the same is not availed within the period prescribed therein. Accordingly, this Court allowed taxpayers to avail the input tax credit by permitting them to file TRAN-1 form on or before 30th June, 2020. Learned counsel for the Petitioner further submitted that

irrespective of the said decision, since admittedly the TRAN-1 form in the case of the Petitioner was filed well before the specified date, notwithstanding the benefit granted by the Court in the said judgment, the Petitioner is entitled to transition the credit.

13. Mr. Harpreet Singh, Senior Standing Counsel for GST on the other hand opposed the petition and submitted that the Petitioner is not entitled to the benefit being sought in the present petition. Mr. Harpreet Singh argued that the Petitioner can also not avail the benefit of the judgment of this Court in the case of ***Brand EquityTreaties Ltd.*** (supra), as recently, with the passing of the Finance (Amendment) Act, 2020 which has been given presidential assent on 27th March, 2020, Section 140 of the CGST Act has been retrospectively amended. He submits that vide Section 128 of the Finance (Amendment) Act, 2020, the words "within such time" have been inserted in Section 140 (1) and this amendment has been given retrospective effect from 1st July, 2017. Thus, the Central Government has been granted the power to prescribe the time limit for filing TRAN-1. The absence of power to prescribe a time limit for filing TRAN-1 was a critical factor that weighed with this Court in the case of ***Brand Equity Treaties*** (supra) to hold that the limitation period under Rule 117 for filing TRAN-1 is merely directory and not mandatory. But, by virtue of retrospective amendment, there has been a change in circumstances and the benefit of the judgment in the case of ***Brand Equity*** (supra) is no longer available to the Petitioner. Mr. Harpreet Singh further argued that ITGRC set up vide circular No. 39/13/2018 dated 3rd April 2018, examined Petitioner's case, but did not find any merit, for granting relaxation, considering the fact that there was no technical glitch

faced by the Petitioner while uploading the TRAN-1 Form. The case of the Petitioner fell in the category "*the taxpayer has successfully filed TRAN-I, but no technical error has been found*". Since the Petitioner did not encounter any technical glitch on the portal, his request to file a revised TRAN-1 form beyond the limitation period was not accepted. Mr. Harpreet Singh further argued that pursuant to the directions given by Bombay High Court in Petitioner's earlier writ petition No. 712/2019, its representation was considered again by ITGRC. However, since the discrepancy in electronic credit ledger is because of a human error, the benefit of the aforenoted circular has not been extended to the Petitioner.

ANALYSIS AND FINDINGS

14. The issue raised by the Petitioner is not new, but a recurrent one. Petitioner before us made an attempt to transition the available credit under the existing laws by filing Form TRAN-1, but the electronic credit ledger under the GST laws does not reflect the entire credit. The ITC seems to have vanished in the rigmarole of the statutory GST Forms. The credit actually available for transition and what was actually transferred, can be explained by the following tabulation:

Form TRAN-I filed on 27.8.2017 under Section 140(1) of CGST Act for transitioning closing balance of credits in erstwhile returns		**Credit actually transitioned in Electronic Credit Ledger of the Petitioner**	**Credit not transitioned to the Electronic Credit Ledger of the Petitioner**
Erstwhile Return	**Amount (Rs.)**	**Amount (Rs.)**	**Amount (Rs.)**

ER-1 (Excise)	3,86,54,605/-	1,01,24,382/-	5,51,33,699/-
ST-3 (Service Tax)	1,64,79,094/-		
Form 231 (Maharashtra VAT)	1,01,24,382/-		
TOTAL	**6,52,58,081/-**	**1,01,24,382/-**	**5,51,33,699/-**

15. The aforesaid error occurred while filing the requisite TRAN-1 , as apparently Petitioner failed to fill in the correct details in the right column, which is evident from the screenshot of Form GST TRAN-1, annexed along with the petition. The same is extracted hereinbelow:

Sr. No.	Registration no. under existing law	Tax period	Date of filing of the return	Balance CENVAT credit	CENVAT Credit admissible as ITC
1.	AACCV0528KXM001	062017	10/07/2017	3,86,54,605.00	1,01,24,382.00
2.	AACCV0528KST001	062017	13/08/2017	1,64,79,094.00	0.00

16. When we make a comparison of the figures reflected in the screenshot with those in the statutory returns, it is revealed that the credit which was reflected in Form 231 under the Maharashtra VAT Act of Rs. 10,124,382/- instead of being added to the remaining amount reflected in the tax returns under the Excise Act (ER-1) and Service Tax Act (ST-3), was instead erroneously reflected under the heading "*CENVAT Credit admissible as ITC*". Thus, for this clerical mistake, there has been short transitioning of the credit, as a result whereof , Petitioner stands to lose huge amount of ITC, totaling to Rs. 5,51,33,699/- that stood vested in it'sfavour under the erstwhile regime.

The GST system and its procedural fallibility and shortcomings

17. The stand of the Respondent, in a nutshell, is that since Petitioner has committed this mistake, it ought to suffer for the same. Let us assume that indeed the mistake happened purely on account of a human error, for which Petitioner alone is worthy of blame. Does it mean that for this blunder, the law will provide no restitution and it is a *fait accompli* for the Petitioner? In our view, that should never be the case and law should provide for a remedial avenue. In our view, the stand of Central Government, focusing on condemning the Petitioner for the clerical mistake and not redressing the grievance, is unsavory and censurable. Tax laws, as it is, are complex and hard to interpret. Moreover, no matter how well conversant the taxpayers may be with the tax provisions, errors are bound to occur. Therefore, if the tax filing procedures do not provide for an appropriate avenue to correct a bona fide mistake, the same would lead to the taxpayers avoiding compliances. We cannot ignore the fact that the necessary Forms under GST are difficult to identify and the Government had to put efforts to assist the citizens in understanding the procedures. Till date, GST awareness campaigns and citizen outreach programmes are in place to acquaint the taxpayers with the GST filing procedures. Particularly, with the entire system being online, the interface between the taxpayers and authorities is entirely electronic. This requires some basic fundamental knowledge for using the technology. Since GST law is a major tax reform in indirect taxation, the difficulties faced in filing of the statutory forms is understandable. In this process, human errors cannot be ruled out and if they occur, the solution is not to criticize the taxpayer for the fault, but instead,

the Government should endeavour to find a resolution. The government should support its citizens by making the burden of compliance and payment as simple as possible. The intent and efforts of the Government should be to extend proper assistance, information and education to taxpayers so that they fulfil their obligations. This should be the critical area of focus in the area of tax administration which would ensure compliance with tax laws and also build confidence amongst taxpayers. Indeed, by explaining the significance of payment of taxes, and the role that a taxpayer plays in building the nation, the Government endeavors to encourage and motivate the citizens to be tax compliant. If we strive to achieve this goal, it is necessary that we must also provide appropriate channels for resolution of their genuine problems. A successful resolution, a positive response and an effective, timebound redressal mechanism is crucial for building confidence amongst the taxpayers and for successful tax administration. We have in a series of decisions, discussed as to how the advent of GST law created challenges for the taxpayers because of the lack of understanding of procedures provided therein. In fact, in the recent decision in ***Brand Equity*** (supra), this aspect has been discussed elaborately and we need not reiterate the same.

The Finance (Amendment) Act, 2020 and its impact; Judgment in Brand Equity (supra)

18. To deny the Petitioner relief sought by them, only explanation alluded to in the counter affidavit is that benefit of the judgment of this Court in ***Brand Equity*** (supra) is no longer available. It is argued that in view of retrospective amendment to Section 140 of the CGST Act, 2017, introduced

by the Finance (Amendment) Act, 2020, there has been a relevant change in circumstancesand thus the above-said decision is no longer valid. The power to prescribe a time limit for filing TRAN-1 has been provided by the insertion of words "within such time" in Section 140 with retrospective effect from 1st July, 2017. It has been argued that now that the amendment specifically provides for prescribing a time limit for filing TRAN-1 Form, the period so provided under Rule 117 would have legal sanctity and therefore the factor which weighed with this Court to hold that the limitation period provided under Rule 117 for filing TRAN-1 is merely directory and not mandatory, no longer holds good.

19. The above amendment to Section 140 came to be notified on 18th May 2020, vide notification No. 43/2020 dated 16th May 2020. Thus, the said amendment came into force after the date of the decision in ***Brand Equity*** (Supra). The said amendment was also not cited before the Court to contest the petitions. With that being said, since, there is no specific challenge to the amendment introduced by Section 128 of the Finance (Amendment) Act, 2020, we do not want to venture into legality of the said provision *viz-a-viz* the judgment of ***Brand Equity (Supra).***

20. Nevertheless, all things considered, in spite of the amendment, we can say without hesitation that the said decision is not entirely resting on the fact that statute [CGST Act] did not prescribe for any time limit for availing the transition of the input tax credit. There are several other grounds and reasons enumerated in the said decision and discussed hereinafter, that continue to apply with full rigour even today, regardless of amendment to

Section 140 of the CGST Act.

Arbitrary distinction of timelines under Rules 117 & 117 (IA)

21. Petitioner's case has been rejected on the ground of being "non-technical" human error and the benefit of Rule 117(1A) has not been given. Let us elaborate on this aspect and note some of the relevant provisions. Here, we are concerned only with sub-section (1) of section 140 and Rule 117 and 117(1A). The same are extracted below:

> ***"AmendedSection 140 of the CGST Act***
>
> *140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law* ***within such time*** *and in such manner as may be prescribed: "*
>
> ***Rule 117 and Rule 117 (1A)***
>
> *117.* ***Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day****.-(1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in* ***FORM GST TRAN-1****, duly signed, on the common portal specifying therein, separately, the amount of input tax credit of eligible duties and taxes, as defined in Explanation 2 to section 140, to which he is entitled under the provisions of the said section:*
>
> *Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period*

not exceeding ninety days.

Provided further that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004.

[(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in ***FORM GST TRAN-1*** *by a further period not beyond [31st December, 2019], in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.]"*

22. The first proviso of Rule 117, stipulates that the Commissioner on the recommendations of the Council can extend the period of ninety days for filing TRAN-1, by a further period, not exceeding ninety days. As also noticed in ***Brand Equity*** (supra), the Government amended the rules and introduced Sub-rule (1A) empowering the Commissioner to extend the date for submitting the declaration electronically in Form GST TRAN-I by a further period (not beyond 31.12.2019). This sub-rule is applicable to registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the GST Council had made a recommendation for such extension. This Sub-rule (1A) begins with a non-obstante clause - "notwithstanding anything contained in Sub Rule (1)". Thus, by introducing the said provision, notwithstanding the embargo introduced under Rule 117 (1) of

the CGST Rules, the Government opened a narrow window for registered persons who faced technical difficulties on the common portal while filing Form TRAN-1. The Central Government has been consistently extending the time period for filing the Form TRAN-1 even beyond 31.12.2019 for those taxpayers who are covered by Rule 117 (1A). Recently in view of the order No. 01/2020-GST dated 7th February, 2020 issued by Government of India, Ministry of Finance, the period was extended upto 31st March 2020. Thus, when we contrast the time limit stipulated under Rule 117 (1) and Rule 117(1A), we find that the time limit of 90 days is not sacrosanct. In ***Brand Equity (supra),*** that court has observed that the government has not ascribed any meaning to the words "*technical difficulties on the common portal*" and it cannot be interpreted in a restrictive manner. The relevant portion is extracted hereinbelow:

> "18. In above noted circumstances, the arbitrary classification, introduced by way of sub Rule (1A), restricting the benefit only to taxpayers whose cases are covered by "technical difficulties on common portal" subject to recommendations of the GST Council, is arbitrary, vague and unreasonable. What does the phrase "technical difficulty on the common portal" imply? There is no definition to this concept and the respondent seems to contend that it should be restricted only to "technical glitches on the common portal". We, however, do not concur with this understanding. "Technical difficulty" is too broad a term and cannot have a narrow interpretation, or application. Further, technical difficulties cannot be restricted only to a difficulty faced by or on the part of the respondent. It would include within its purview any such technical difficulties faced by the taxpayers as well, which could also be a result of the respondent's follies. After all, a completely new system of accounting; reporting of turnover; claiming credit of prepaid taxes; and, payment of taxes was introduced with the implementation of the GST regime. A basket of Central and

State taxes were merged into a single tax. New forms were introduced and, as aforesaid, all of them were not even operationalised. Just like the respondents, even the taxpayers required time to adapt to the new systems, which was introduced as a completely online system. Apart from the shortcomings in the system developed by GSTN Ltd., the assessees also faced the challenges posed by low bandwidth and lack of computer knowledge and skill to operate the system. It is very unfair on the part of the respondents, in these circumstances, to expect that the taxpayers should have been fully geared to deal with the new system on day-one, when they themselves were completely ill-prepared, which led to creation of a complete mess. The respondents cannot adopt different standards – one for themselves, and another for the taxpayers. The GST regime heralded the system of seamless input tax credits. The successful migration to the new system was a formidable and unprecedented task. The fractures in the system, after its launch, became visible as taxpayers started logging in closer to the deadline. They encountered trouble filing the returns. Petitioners who are large and mega corporations - despite the aid of experts in the field, could not collate the humongous data required for submission of the statutory forms. Courts cannot be oblivious to the fact that a large population of this country does not have access to the Internet and the filing of TRAN-1 was entirely shifted to electronic means. The Nodal Officers often reach to the conclusion that there is no technical glitch as per their GST system laws, as there is no information stored/logged that would indicate that the taxpayers attempted to save/submit the filing of Form GST TRAN-1. Thus, the phrase "technical difficulty" is being given a restrictive meaning which is supplied by the GST system logs. Conscious of the circumstances that are prevailing, we feel that taxpayers cannot be robbed of their valuable rights on an unreasonable and unfounded basis of them not having filed TRAN-1 Form within 90 days, when civil rights can be enforced within a period of three years from the date of commencement of limitation under the Limitation Act, 1963.

19. The introduction of Sub rule (1A) in Rule 117 is a patchwork solution that does not recognise the entirety of the situation. It sneaks in an exception, without addressing situations taken note of by us. This exception, as worded, is an artificial construction of technical difficulties, limiting it to those existing on the common portal. It is unfair to create this distinction and restrict it to technical snags alone. In our view, there could be various different types of technical difficulties occurring on the common portal which may not be solely on account of the failure to upload the form. The access to the GST portal could be hindered for myriad reasons, sometimes not resulting in the creation of a GST log-in record. Further, the difficulties may also be offline, as a result of several other restrictive factors. It would be an erroneous approach to attach undue importance to the concept of "technical glitch" only to that which occurs on the GST Common portal, as a pre-condition, for an assesee/tax payer to be granted the benefit of SubRule (1A) of Rule 117. The purpose for which Sub-Rule (1A) to Rule 117 has been introduced has to be understood in the right perspective by focusing on the purpose which it is intended to serve. The purpose was to save and protect the rights of taxpayers to avail of the CENVAT credit lying in their account. That objective should also serve other taxpayers, such as the petitioners. The approach of the Government should be fair and reasonable. It cannot be arbitrary or discriminatory, if it has to pass the muster of Article 14 of the Constitution. The government cannot turn a blind eye, as if there were no errors on the GSTN portal. It cannot adopt different yardsticks while evaluating the conduct of the taxpayers, and its own conduct, acts and omissions. The extremely narrow interpretation that the respondents seek to advance, of the concept of "technical difficulties", in order to avail the benefit of Sub Rule (1A), is contrary to the statutory mechanism built in the transitory provisions of the CGST Act. The legislature has recognized such existing rights and has protected the same by allowing migration thereof in the new regime under the aforesaid provision. In order to avail the benefit, no restriction has been put under any provisions of the Act in terms of the time period

> for transition. The time limit prescribed for availing the input tax credit with respect to the purchase of goods and services made in the pre-GST regime, cannot be discriminatory and unreasonable. There has to be a rationale forthcoming and, in absence thereof, it would be violative of Article 14 of the Constitution. Further, we are also of the view that the CENVAT credit which stood accrued and vested is the property of the assessee, and is a constitutional right under Article 300A of the Constitution. The same cannot be taken away merely by way of delegated legislation by framing rules, without there being any overarching provision in the GST Act. We have, in our judgment in A.B. Pal Electricals (supra) emphasized that the credit standing in favour of the assessee is a vested property right under Article 300A of the Constitution and cannot be taken away by prescribing a time-limit for availing the same. ".

23. The aforesaid reasoning still holds good. Additionally, we would like to observe that the rule suffers from the vice of vagueness and concept of "technical difficulty on common portal" and its applicability has not been adequately defined anywhere. Because of absence of any defining words, there is no predictability about the application of this Rule for the class of cases to which it would apply, as is demonstrated in the case in hand. In absence of a criteria, the application of the provision would suffer from arbitrariness. It would be apposite to note that the GST Council in its 32nd meeting expanded the mandate of ITGRC to include those cases where the taxpayers who had been victims of the system failure, whether technical or otherwise. This becomes evident from the office memorandum of GST Council, dated 19th February 2019, relevant portion whereof is extracted hereinbelow:

> "***In 32nd GST Council Meeting, it was decided that the ITGRC shall also consider certain nontechnical issues viz.***

errors apparent on the face of record, where the following conditions are satisfied:

*i. TRAN-1, including revision thereof, has been filed on or before 27th December, 2017 and there is an error apparent on the face of the record (**such cases of error apparent on the face of the record will not cover instances where there is a mistake like wrong entry of an amount e.g. Rs. 10,000 /- entered for Rs.1,00,000/-); and***

ii. The case has been recommended to the ITGRC through GSTN by the concerned jurisdictional Commissioner or an officer authorised by him in this behalf in case of credit of Central taxes/duties, by the Central authorities and in the case of credit of State taxes, the State authorities, notwithstanding the fact that the taxpayer is allotted to the Central or the State authority).”

(Emphasis Supplied)

This indicates that the GST Council recognized that there could be errors apparent on the face of the record that could be non-technical in nature and merit leniency. In line with the spirit of the decision of the GST Council and the blurring thin line between technical and non-technical difficulty, keeping in view that entire filing is electronic, we find the restrictive applicability of Rule 117 (1A) to be arbitrary, as is demonstrated in the facts of the present case.

Concept of ITC and its significance; Whether procedural timelines for TRAN-1 are directory and mandatory?

24. We must not lose sight of the real intention of the Legislature that emerges by reading the scheme of the CGST, especially the transitional

provisions and those dealing with ITC. GST seeks to consolidate multiple taxes into one, and thus it is imperative to have provisions to ensure that the transition to the GST regime is very smooth and hassle-free and no ITC (Input Tax Credit)/benefits earned in the existing regime are lost. In fact, an uninterrupted and seamless chain of ITC is the heart and soul of Goods and Services Tax. This mechanism is built-in to avoid cascading of taxes. Respondents themselves claim *'one of the most important features of the GST system is that the entire supply chain would be subject to GST to be levied by Central and State Government concurrently. As the tax charged by the Central or the State Governments would be part of the same tax regime, credit of tax paid at every stage would be available as set-off for payment of tax at every subsequent stage.'*(Ref: GST Flyer; CBIC Website) Significantly, for the cases covered under Section 140 (1) of the CGST act, ITC under the existing laws is a vested right. This credit stood vested in favour of the taxpayer and would have been utilized for payment of outgoing taxes under the respective legislations, but for the repeal of the existing laws. In order to claim this credit, declaration in form GST TRAN-1 is required to be furnished on the common portal within ninety days from the appointed day i.e. 1st July, 2017 or within such extended time. Thus, the closing balance of the CENVAT credit /VAT in the last returns filed under the existing law can be taken as credit in electronic credit ledger. Such credit would be available only when returns for the previous last six months have been filed under the existing laws. Thus, on analysis of the provisions of Central Goods and Service Tax Act and the Rules framed thereunder, the mind of the legislature on input tax credit becomes clear. The transitional provisions and the language of section 140 of the Act in particular, even

after amendment, manifests the intention behind the said provision is to save the accrued and vested ITC under the existing law. If the legislature has provided for saving the same by allowing a migration under the new tax regime, we have to interpret the rules keeping this objective in focus. This is the reason courts have held that CENVAT credit which stood accrued to the Petitioner is a vested right and is protected under Article 300A of the Constitution of India and could not be taken away by the Respondents, without authority of law, on frivolous grounds which are untenable.

25. Now, when we examine the timelines framed by the Central Government, we must remain focused on the importance of the aforenoted provisions, in relation to the object that is intended to be achieved. At the same time, we also have to examine the consequences that would follow if we construe a provision to be directory and not mandatory. The purpose of the timelines prescribed is just to hasten the migration of taxes from the erstwhile regime to the new GST laws and for swift streamlining of the ITC. The timeline introduced by Rule 117 is purely procedural and as discussed above the same was not treated as sacrosanct. The Central Government has continuously extended the same, by carving out an exception under Rule 117 (1A). Moreover, under none of the provisions of the Act, we can infer the intention of the legislature to create this distinction by way of subordinate legislation. We also cannot decipher any intent to deny extension of time to deserving cases where delay in filing was on account of human error. This interpretation would run counter to the object sought to be achieved under Section 140 of the Act which is the governing provision and exhibits the true legislative intent. The situation before us is not where

the statute fixes any timelines for transitioning of credit. After the retrospective amendment of Section 140, we can interpret that the power to fix the timeline and its extension has been prescribed to the Central Government which was done vide Rule 117. This Rule provides for a time period of 90 days and also stipulates that the same can be extended for a further period not exceeding 90 days. However, under Rule 117 (1A), multiple extensions beyond 180 days have been granted for taxpayers who faced "technical difficulties on common portal". Yet, deserving 'non-technical' cases like the present one have been ignored and this exclusion is arbitrary and irrational. Moreover, if we were to look for a provision in the statute that would stipulate a consequence for failure to adhere to the timelines, we would find none. Rule 117 of the CGST rules also does not indicate any consequence for non-compliance of the condition. Both the Act and Rules do not provide any specific consequence on failure to adhere to the timelines. Since the consequences for non-consequence are not indicated, the provision has to be seen as directory. Pertinently, non-observance of the timelines would prejudice only one party- the registered person/taxpayer. If we interpret the timelines to be mandatory, the failure to fulfil the obligation of filing TRAN-1 within the stipulated period, would seriously prejudice the taxpayers, for whose benefit section 140 has been provided by the legislature. In view of the above discussion, interpreting the procedural timelines to be mandatory would run counter to the intention of the legislature and defeat the purpose for which the transitionary provisions have been provided and have to be construed as directory and not mandatory.

The Form was originally filed well within the prescribed time limit

26. There is another factor that persuades us to come to the aid of the Petitioner. In the instant case, the Form TRAN-1 was filed promptly, within the stipulated period. Immediately, when the Petitioner noticed that the entire credit had not been transitioned, it started corresponding with the Respondent with the hope that the matter would be resolved and the mistake would be rectified. The facts narrated above recount various representations and efforts made by the Petitioner in this direction. It saw a glimmer of hope when Respondents recognized that taxpayers had faced technical glitches on the GSTN portal and created an IT Grievance Redressal Committee to redress such issues. However, Petitioner was not extended the benefit. Thereafter, when another representation was submitted, pursuant to the Bombay High Court order, Petitioner's case was differentiated. It is contended that since Petitioner faced no technical glitch at the stage of filing of the Form, the case does not qualify for any relaxation. The decision of ITGRC is contrary to the decision of the 32nd meeting of GST Council and the office memorandum dated 19th February 2019 referred above. GST Council categorically expanded the mandate of ITGRC and observed that it would also look into cases where "*there is an error apparent on the face of the record (such cases of error apparent on the face of the record will not cover instances where there is a mistake like wrong entry of an amount e.g. Rs. 10,000 /- entered for Rs.1,00,000/-).* The facts before us meet the above criteria. Visibly there is an error apparent on the face of record. The ITC reflected in the returns has been shown as 'blocked credit' and is not a mistake in the entry of figures. Yet, before us, Respondents determinedly defend their action. They continue to deny full credit, by further arguing that

the mistake is because of human error and revision is time barred and should be treated as a case of fresh-filing. This contention is wholly misplaced. TRAN-1 Form was filed within the stipulated period and revision thereof , to correct an error, will relate back to the said date of filing. We do not see any convincing reason to hold that as on date, the revision of the said return, will be time-barred and treated to be a fresh return. The revised data can be easily verified and correlated with the tax returns filed in the erstwhile regime. In fact, Rule 120A of CGST Rules is an enabling provision that can be resorted to, by the taxpayers to revise the Form GST TRAN-1 on the common portal within the time specified in the rules or such further period as may be extended by the Commissioner. In the present case, the mistake was clerical in nature. It is the Respondents who have, for specious reasons, denied this opportunity to the Petitioner. Therefore, the revision cannot be treated as a fresh filing , especially, keeping in view the spirit of the spirit of 32nd meeting of GST Council, referred above

Non-disclosure of reasons for denying claim of the Petitioner and arbitrariness in rejection.

27. There is yet another reason that entitles the Petitioner to the relief sought in the present petition. Petitioner's case was considered and rejected by the IT Grievance Redressal Committee, despite the recommendation of the Jurisdictional Commissionerate. It is also pertinent to note that the Respondents had given an undertaking before the Bombay High Court in Writ Petition No. 712/2019 that the grievance of the Petitioner will be redressed and its case will not be thrown out only on the ground that it was received beyond the cut-off date. Armed with the order of the Court, when

the Petitioner submitted a fresh representation, Respondents, without giving any cogent reasoning, as is evident from the letter dated 12th July, 2019, reproduced in para 9 above, rejected the same. The said letter also exhibits complete non-application of mind. For the last three years, Petitioner has made countless complaints and representations. Respondents have consistently denied the Petitioner an opportunity to revise the return without disclosing the reasons for arriving at this decision except for a cryptic one-line rejection order. Petitioner has called upon the Respondents time and again to intimate specific reasons for rejection of its case. It also filed an RTI application in this regard. However, the Respondents have resolutely held on to their stand. For some mysterious reason, the grounds for rejection are being withheld, as if, the same are some guarded secret. The approach of the Respondents is grossly unjust and disappointing and we disapprove the same. Petitioner, as a matter of right, should know the specific reasons for the rejection of his case so that it can assail the same. Respondents had an opportunity to disclose such reasons in the counter affidavit, and we are surprised to note that despite that, they have chosen to remain silent on the main issue. Instead, they have relied upon the amendment to Section 140 to prevail upon us that we should not grant the benefit to the Petitioner in terms of our decision in ***Brand Equity*** (supra).

28. The stand taken today runs counter to the assurance given before Bombay High Court and is also not borne out, from the record. It has been argued that the discrepancy in the figures has crept in because of human error and there is no provision in the Act or the rules that can be relied upon by the Petitioner to reclaim the shortfall. The restriction that prevents the

Petitioner from taking the entire credit by revising the return, based on the footing of a "human error" and not "technical difficulty on common portal" is thus wholly unreasonable, being irrational and arbitrary and therefore, violative of Article 14 of the Constitution. One-line, non-speaking order relied upon to justify the rejection cannot be countenanced. Viewed from another angle, one can construe Petitioner's difficulty as technical in nature, as the short credit is reflected as blocked credit on the portal, with no provision to rectify the same electronically. In absence of any clause defining "technical difficulty on common portal", as discussed above, Petitioner's case would even be covered by Rule 117 (1A) of the CGST Rules. GST laws required taxpayers to embrace transformative new ways. The use of technology can be daunting for many taxpayers who hitherto before, were largely dependent on conventional manual filings of returns. In order to overcome the resistance to change and encourage transformation and remodeling of the entire accounting structure at taxpayers' end, the electronic mode should be user friendly. Sadly, the Respondents have not helped the situation, despite all the good intentions they may have. They have further compounded the problems for the taxpayers by being adamant about their stand and exhibited no flexibility in approach. The exactness required in compliance of tax provisions should not be construed so rigidly that permissible flexibility is completely disregarded. In effect, the ITC has been expropriated without any lawful sanction. The ITC that was shown in the returns under the existing laws were taxes that stood paid to the respective Governments for goods or services and were available for adjustment or utilization in accordance with law. Now, on account of a clerical mistake the said taxes paid are being appropriated, without cause,

putting the Petitioner in serious jeopardy by subjecting it to further taxation under GST without the benefit of ITC. The case before us demonstrates how the tax department has miserably fallen short of the expectation. It is regrettable that Respondents have failed to address the basic and fundamental problem faced by the Petitioner that occurred while filing a Form, seemingly on account of a bona fide or inadvertent mistake. Instead of offering a restitutive solution they have stonewalled all the attempts made by the Petitioner The injustice and prejudice caused to the Petitioner is profound and it's disillusionment and despair is evident. Therefore, we cannot uphold the stand of the respondent which is founded on some illogical understanding of the Rules. We have time and again made adverse remarks on the procedural working of the GST system in several decisions. We may just add that we do not derive any pleasure when we make such observations, as comments of the Court affect the reputation of the administration in the country. Such remarks are made only when we are constrained to do so. The case before us is one where there is a complete lack of understanding and fairness on the part of the Tax Department.The fact that Respondents have done nothing to solve the problem faced by the Petitioner, fueled with the adamant stand before us, contributes to skepticism of GST technical infrastructure, which we feel should and can be easily avoided. Only if Respondents were to engage with the taxpayers with a genuine intention to solve the problems, confidence in the system can be built up and such matters would not reach courts.

29. For the aforegoing reasons, the Petition deserves to be allowed. Petitioner is permitted to revise TRAN-1 Form on or before 30.06.2020 and

transition the entire ITC, subject to verification by the Respondents. We issue a writ mandamus to the Respondents to either open the online portal so as to enable the Petitioner to file revised declaration TRAN-1 electronically, or to accept the same manually. Respondents shall thereafter process the claims in accordance with law

30. The petition is allowed in above terms.

SANJEEV NARULA, J

MANMOHAN, J

JUNE 16, 2020
nk