

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

JAIPUR BENCH, JAIPUR

D.B. CIVIL WRIT PETITION NO. _____/2017

1. RAJASTHAN TAX CONSULTANTS ASSOCIATION HAVING OFFICE AT B-145/B, KALYAN PATH, MANGAL MARG, BAPU NAGAR, JAIPUR – 302015 THROUGH VINAY KUMAR JOLLY (GENERAL SECRETARY)

...Petitioner

VERSUS

1. UNION OF INDIA, MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) ROOM NO. 46, NORTH BLOCK, NEW DELHI - 110 001

2. STATE OF RAJASTHAN, FINANCE DEPARTMENT (TAX DIVISION) 1ST FLOOR, MAIN BUILDING, GATE 2, GOVERNMENT SECRETARIAT, JAIPUR, RAJASTHAN 302005

3. GST COUNCIL THROUGH ITS CHAIRPERSON UNION FINANCE MINISTER, MINISTRY OF FINANCE, NORTH BLOCK, NEW DELHI - 110 001

4. GOODS AND SERVICE TAX NETWORK HAVING ITS OFFICE AT EAST WING, 4TH FLOOR, WORLD MARK-1, AEROCITY, NEW DELHI 110037

...Respondents

WRIT PETITION

UNDER

ARTICLE 226

OF THE CONSTITUTION OF INDIA

AND

IN THE MATTER OF

ARTICLE 14, 19(1)(g) AND 265

OF THE CONSTITUTION OF INDIA

AND

IN THE MATTER OF

ARBITRARY FIXATION OF DATES FOR STATUTORY COMPLIANCES

THROUGH

IMPUGNED NOTIFICATION NO.

**18/2017 DATED 8TH AUGUST 2017, 19/2017 DATED 8TH AUGUST
2017, 20/2017 DATED 8TH AUGUST, 2017, 23/2017 DATED 17th
AUGUST 2017 AND 24/2017 DATED 21st AUGUST, 2017 UNDER
CGST ACT, 2017,**

AND

IMPUGNED NOTIFICATION BEARING NO F.

**17(31)ACCT/GST/2017/2344 DATED 17TH AUGUST, 2017 AND
NOTIFICATION NO. F.17 (131) ACCP/GST/2017 DATED 21ST
AUGUST, 2017 UNDER RSGST ACT, 2017**

OVERLOOKING DEFECTS/SHORTCOMINGS/TECHNICAL ERRORS

ON GSTN

AND

IN THE MATTER OF

RENDERING STATUTORY PROVISIONS

UNDER CGST ACT,2017

AND RGST ACT, 2017

OTIOSE/REDUNDANT

To

**The Hon'ble Chief Justice and his other Hon'ble companion Judges of this Hon'ble High Court of
Judicature for Rajasthan at Jaipur.**

MAY IT PLEASE YOUR LORDSHIPS:

RESPECTFULLY SHOWETH:

1. That the Petitioner is voluntary registered Association comprising of around 1990 members duly registered under Section 3 of the Rajasthan Non Trading Companies Act, 1960. Petitioner take up the issues relating to members and the working of officers with the Tax Administration. Petitioner Association comprises of Advocate, Chartered Accountant and others professionals engaged in the practice of law of the Central/or State Government relating to taxes who are associated for common good and objectives. The object of the Associations, interalia, is to provide effective forum for the discussion of the matters pertaining to the tax laws and their administration for the collection and dissemination of information relating thereto. Further, Petitioner also works for the development of better understanding and cooperation amongst members, tax administration, tax payers and all other

concerned and assist taxpayers against illegal impositions and to represent for their cause. A copy of the list of the Petitioner members along its Memorandum of Association and Article of Association is annexed herewith and marked as **Annexure 1 Colly**.

2. That the Respondent No. 1 is the Union of India which has issued the Notification Number 23/2017 (hereinafter referred as “**Impugned Notification**”) dated 17th August 2017 under Central Goods and Services Tax Act, 2017 (hereinafter referred as “**CGST**”) prescribing last dates for furnishing the return in Form GSTR -3B electronically through the common portal for the month of July, 2017. Respondent No. 1 vide its Notification No. 24/2017 dated 21st August, 2017 (hereinafter referred as “**Impugned Notification**”) amended the Notification dated 17th August, 2017 and thereby extending the date for furnishing the return of GSTR-3B to 25th August, 2017. Moreover, Respondent No. 1 has also vide Notification Number 18/2017, Notification Number 19/2017, Notification Number 20/2017 dated 8th August, 2017 (hereinafter referred as “**Impugned Notification**”) extended the dates for furnishing the return in Form GSTR 1, GSTR 2 and GSTR 3 respectively. Respondent No. 2 is State of Rajasthan which has issued the Notification bearing No F.17(31)ACCT/GST/2017/2344 (hereinafter referred as “**Impugned Notification**”) dated 17th August, 2017 under Rajasthan Goods and Services Tax Act (hereinafter referred as “**RGST**”) for prescribing the last dates for furnishing the return in Form GSTR -3B electronically through the common portal for the month of July, 2017. Further Respondent No. 2 has also issued Notification No. F.17 (131) ACCP/GST/2017 dated 21st August, 2017 (hereinafter referred as “**Impugned Notification**”) amending the Notification dated 17th August, 2017 and thereby extending the dates for furnishing the return of GSTR-3B to 25th August 2017. Respondent No.3 is Goods and Service Tax Council constituted by the order of President of India as per Article 279A of the Constitution of India to make recommendation to the Union and the States on items mentioned under article 279A(4) of the Constitution of India. A copy of the Impugned Notifications are annexed herewith and marked as **Annexure 2 Colly**.

3. As per Section 146, the Government may on the recommendation of the GST Council can notify the common Goods and Services Tax Electronic Portal for payment of tax , filing of returns, computation settlement and for carrying out such other functions and purposes as may be prescribed. In exercise of the above power, the Government has notified www.gst.gov.in, the website as managed by the Goods and Services Tax Network (Respondent No. 4) as the common Goods and Services Tax Electronic Portal. Respondent No. 4 is a non-Government, private limited Company registered under Section 8 of the Companies Act, 2013. The Company has been set up primarily to provide IT infrastructure and services to the Central and State Governments, tax payers and other stakeholders for implementation of the Goods and Services Tax (hereinafter referred as “**GST**”).

4. That at the very outset, it is submitted that the members of the Petitioner association are aggrieved against the arbitrary fixation of last dates for the statutory compliances and the filing of returns/registration forms etc. by the Respondents overlooking the unpreparedness /technical glitches/shortcomings at Goods and Services Tax Network (hereinafter referred as “**GSTN**”) portal thereby resulting in non compliances and exposing client’s of the members of the Petitioner Associations (hereinafter referred as “**assessee**”/“**assessee’s**”) to several penalties under the respective Acts and thereby also bringing disrepute to the tax professionals/members of the Petitioner Association as their respective assessee look up to the tax professionals for the solution and statutory compliances and thereby resulting in creating impediments/hindrances in the effective discharge of the professional duties by the

members of the Petitioner Association guaranteed under Article 19(1)(g) of the Constitution of India.

5. That the very purpose of GST is to integrate State economies and boost overall growth by creating a single, unified Indian market to make the economy stronger. Its main objective is to consolidate multiple indirect tax levies into a single tax thus subsuming an array of tax levies, overcoming the limitations of existing indirect tax structure, and creating efficiencies in tax administration. Aiming “One Nation One Tax” the scheme of law was designed in such a manner that assessee’s across the country have to file the details on a single web based portal regarding his business. The said portal was managed by Respondent No. 4. The said portal was not ready with its utilities. As a result of the unpreparedness by the Respondents, the Petitioner’s members and assessee’s are facing huge difficulty in filing returns and in making statutory compliances as prescribed under the CGST Act, 2017, Integrated Goods and Services Tax Act, 2017 (hereinafter referred as “**IGST Act**”) and the RGST Act, 2017.

6. That with the advent of GST regime from 1st July, 2017, the difficulties/problems being faced by the members of the Petitioner association in the discharge of their professional duties towards assessee are enumerated herein below:-

Registration related issues

(a) That as per Section 22 of CGST Act, 2017 and Section 22 of RGST Act, 2017, assessee was required to register on the GSTN portal if its aggregate turnover exceeds Rs. 20 lakhs or if they are already registered or hold licence under the existing law. Further, Section 25(1) of CGST Act, 2017 and Section 25(1) of RGST Act, 2017, specifies that assessee are required to register within 30 days from the date they become liable to registration. However, due to technical glitches viz non generation of Application Reference Number, provisional registration getting automatically cancelled etc., assessee were/are unable to register on the portal. Further, no proper support was provided by the Respondents to identify and speedily redress the problem. This has made the said assessee susceptible to the penalty upto Rs. 25,000/- leviable under Section 125 of CGST Act, 2017 and Section 125 of RGST Act, 2017 by Respondent No. 1 and Respondent No. 2 respectively in the event of non registration by a person required to be registered under the said Acts. Sample list of such assessee’s who were not able to migrate or register over the GSTN portal on time is annexed herewith and marked as **Annexure 3**.

(b) That as per Section 22(2) of the CGST Act, 2017 and the corresponding Section 22 (2) of the RGST Act, 2017, assessee is liable to get the registered under the GST law if it is registered or held license under the earlier law. Further as per Section 139 of the CGST Act, 2017 and the corresponding Section 139 of the RGST Act, 2017, assessee who is already registered under the existing law shall be issued a certificate of registration on provisional basis which will be replaced by the final registration certificate, pursuant to compliance of prescribed conditions. That for obtaining the final registration certificate Form GST REG-26 has to be submitted electronically by the assessee in accordance with the provisions of Rule 23(2) of the CGST Rules, 2017 and Rule 23(2) of RGST Rules, 2017. That on making the said

Application for migration/registration, Application Reference Number (hereinafter referred as “ARN”) is required to be generated. ARN is a unique number which gets generated on submission of any application on GSTN and is mandatory to track the status of the said application. However, in certain cases after submitting the Application for migration/ registration, GSTN portal was not generating the ARN or ARN was generated after a considerable delay. Consequently, Petitioner’s members were unable to track the status of application of their assessee and therefore assessee’s were unable to proceed subsequently for the supply of the goods or services. In such a scenario the assessee’s are neither able to carry on normal business activities nor make the compliances under the CGST Act, 2017 and the RGST Act, 2017 such as filing of returns etc, opting for composition etc. Sample list of such assessee’s who were not able to generate ARN or ARN was generated late is annexed herewith and marked as **Annexure 4**.

(c) That as per Section 22(2) of CGST Act, 2017, and Section 22(2) of RGST Act, 2017, on and from the appointed day, every person registered under any of the existing laws shall be issued a certificate of registration on provisional basis. As per Rule 20 and Rule 24 of the CGST Rules, 2017, and Rule 20 and Rule 24 of the RGST Rules, 2017, Form GST REG 16 (in case of regular registration) and Form GST REG 29 (in case of provisional registration) respectively has to be filed, if a person has to opt for cancellation of registration. However, there is no option available for assessee to cancel/surrender such registration on the GSTN portal and thereby opt out from the net of GST.

(d) That if there is any change in the details furnished in the application for registration then it is required as per rule 19 of CGST Rules, 2017 and Rule 19 of RGST Rules, 2017 to intimate the same within a period of 15 days by filing form GST REG 14. However, till date, the facility for amendment in registration details is available only in respect of type and details of registration under earlier law, details of person in- charge and authorised signatory. That the said facility of amendment is not available in respect of certain essential details such as name, mobile number, email address, place of business, etc. Consequently, assessee’s are not able to start any new business activities or operate from any new premises and will be exposed to non compliance until and unless its details are amended on the GSTN portal.

(e) That as per Section 10 of CGST Act, 2017 and Section 10 of RGST Act, 2017, every registered person whose aggregate turnover in the preceding financial year did not exceed fifty lakhs rupees could opt for composite scheme. However, the said limit was further increased to 75 lakhs rupees. Further, Rule 3 of CGST Rules, 2017, and Rule 3 of RGST Rules, 2017, states that any person who opts to pay tax under the composite scheme has to file intimation in Form GST CMP-01 within 30 days from the date of grant of provisional registration. The said time limit of 30 days was extended till 16th August, 2017 as per Order No. 01/2017-GST dated 21st July 2017 issued by Ld. Commissioner (GST) under Section 168 of the CGST Act, 2017, and Order No. F.17(131)ACCT/GST/2017/2258 dated 21.07.2017 issued by Commissioner of State Tax dated 21.07.2017 under Section 168 of the RGST

Act, 2017. However, on account of technical glitches at the GSTN portal the assessee's were not able to opt for the same till the said date. In certain cases after submitting composition option the assessee or the members of the Petitioner received the message that they have already opted for composition levy. However, when the saved application is viewed by the assessee or the Petitioner's members on the GSTN Portal, message appeared that no application for opting for the composition scheme was submitted or address details not found. That now the option for opting for the composition scheme for the Financial year 2017-18 is no longer available at the GSTN portal and the assessee has already started their business activities treating himself under composition scheme. Hence, the assessee of the Petitioner is unable to opt for the composition scheme for this year. A Sample list of such assessee's who were unable to file the said form for opting the composition scheme is annexed herewith and marked as **Annexure 5**. A copy of Order No. 01/2017-GST dated 21st July 2017 issued by Ld. Commissioner (GST) and Order No. F.17(131)ACCT/GST/2017/2258 dated 21.07.2017 issued by Commissioner of State Tax dated 21.07.2017 is annexed herewith and marked as **Annexure 6**. A copy of the screenshots showing the technical errors for composition scheme are annexed herewith and marked as **Annexure 7 Colly**.

(f) That as per the provision of Section 22 read with Section 25 of CGST Act, 2017 along with Rule 10(2) of CGST Rules, 2017 and corresponding Section 22 and Section 25 of RGST Act, 2017 along with Rule 10(2) of RGST Rules, 2017, it is required that every supplier whose aggregate turnover in a financial year exceeds 20 lakhs rupees shall apply for registration within 30 days from the date on which he become liable for registration. As per Rule 10(2) of CGST and RGST Rules, 2017, it is specifically provided that the registration shall be effected from the date on which the person becomes liable for registration. As per GSTN portal, the effective month of registration in case of new registrant is appearing in the month in which the registration been granted. This effectively debars the registrant or the assessee from filing its returns, take credit of tax paid and other compliances for the month in which he has become liable for registration. A copy of the sample list of cases where registration applied in July, 2017 but registration effective from August, 2017 is annexed herewith and marked as Annexure 8.

Return filing related issues

(g) That Rule 117 of CGST Rules, 2017 and Rule 117 of RGST Rules, 2017 provides for 90 days time limit from the appointed day i.e. 1st July 2017 to submit declaration electronically in form TRAN 1. Through the said form every registered person shall be entitled to avail balance of input tax paid in the earlier tax regime, transitional credit on stock, unavailed credit on capital goods, details of goods held by agents etc. However, the form TRAN 1 was made available on the GSTN portal only on 21st August, 2017 i.e. only after 51 days of the appointed day, thereby leaving effectively allowing 39 days to the registered person to file TRAN 1 which is contrary to the time-limit prescribed by the aforesaid provisions of the law. It is pertinent to note that without the form TRAN 1 assessee cannot carry forward his legitimate credit

under the GST regime and set off towards his liability for the month of July, 2017.

(h) That as per Section 37(1) of CGST Act, 2017, every registered person has to file details of output supply effective during the tax period on or before 10th day of the month succeeding the said tax period. As per Rule 59 of CGST Rules, 2017 form GSTR 1 has to be filed electronically through the common portal. Utility for filing GSTR 1 was not available till 24th July, 2017. Further, Vide Impugned Notification No. 18/2017 – Central Tax dated 8th August, 2017, Respondent No. 1 extended the due date of filing of GSTR 1 for the month of July, 2017 and has specified the time period for filing the details of outward supply in FORM GSTR 1 to 1st - 5th September, 2017 and for the month of August, 2017 to 16th September, 2017 - 20th September, 2017. Therefore, Respondent has provided time period of only 5 days i.e. 1st – 5th September, 2017, for filing of details of outward supplies in Form GSTR 1 as against the time period of 10 days i.e. 1st – 10th August, 2017 days as prescribed under the statute. Further, filing of above utility requires internet connectivity, specified system requirements, compilation of voluminous information etc. For all such reasons, it becomes difficult to do timely compliances in such a small time of 10 days.

(i) Further, as per Section 38(2) of CGST Act, 2017 every registered person has to file the details of inward supplies after the 10th day but on or before 15th day of the month succeeding the tax period. As per Rule 60 of CGST Rules, 2017 form GSTR 2 has to be filed electronically through the common portal on the basis of details contained in Part A of GSTR 2A. GSTR 2A is a auto populated electronically on the basis of entries made by supplier in GSTR 1. Hence, it becomes practically difficult to file GSTR 2 in case the entries relating to inward are not populated in Part A of GSTR 2A. Vide Impugned Notification No. 19/2017 – Central Tax dated 8th August, 2017, Respondent No. 1 extended the due date of filing of GSTR 2 also for the month of July, 2017 to 6th - 10th September, 2017 and for the month of August, 2017 to 21st September, 2017 - 25th September, 2017 to synchronize the same with filing of GSTR 1. However, as mentioned above that a very short time period has been provided that for filing GSTR 1. Hence, it is difficult to comply with the requirement of filing of GSTR 2 on time.

(j) That as per Section 39(1) of CGST Act, 2017, every registered person has to file in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies, input tax credit availed, tax paid and such other particulars as may be prescribed on or before 20th day of the month succeeding such calendar month. As per Rule 61 of CGST Rules, 2017 form GSTR 3 has to be filed electronically through the common portal. As per Rule 61 of CGST Rules, 2017 part A of GSTR 3 shall be electronically generated on the basis of information furnished through form GSTR 1 and GSTR 2. If proper details of GSTR 1 and GSTR 2 are not generated in part A of GSTR 3, it will be difficult on the part of assessee to comply with filing of GSTR 3. Further, vide Impugned Notification No. 20/2017 – Central Tax dated 8th August, 2017, Respondent No. 1 extended the due date of filing of GSTR 3 for the month of July, 2017 to 11th - 15th September, 2017 and for the month of

August, 2017 to 26th September, 2017 - 30th September, 2017 to synchronize with the filing of GSTR 1 and GSTR 2. However, till date no utility for filing GSTR 3 has been made available on the GSTN portal. This takes away the statutory right of timely compliance of filing GSTR 3 from the assessee. It is pertinent to note that assessee's were able to adhere the timelines prescribed under the statute for filing returns of GSTR 1, GSTR 2 and GSTR 3 for month of July due to several technical issues such as non availability of forms, slow response time of GSTN portal etc. Thereafter, the timelines for filing the said returns are extended as detailed aforesaid.

(k) That as per Rule 61(5) of CGST Rules, 2017, in case where time limit for filing GSTR 1 and GSTR 2 has been extended, return in form GSTR 3B in lieu of GSTR 3 may be furnished in such manner and subject to such condition as may be notified by Commissioner. As per Notification No. 21/2017 dated 8th August, 2017, the date for filing GSTR 3B for the month of July is 20th August, 2017. The commissioner in exercise of his power has issued Impugned Notification dated 17th August, 2017 thereby extending the date of filing GSTR 3B for the month of July as 28th August, 2017 only for those assessee who have to file TRAN 1. However, the date for filing the GSTR 3B return for the month of July was further extended till 25th August, 2017 for all assessee's and 28th August, 2017 for specified assessee's (person opting from TRAN – 1) by Notification No. 24/2017 dated 21st August, 2017. On account of non availability of TRAN 1 utility till 20th August, 2017, assessee's were required to file TRAN 1 in a short time frame of 7 days so as to avail benefit of balance tax credits of earlier tax regime. Further, on account of several system issues viz.

(a) Slow response time of the GSTN portal.

(b) Specified Information Technology system requirement not readily available and understandable especially in rural areas.

(c) The saved data automatically got lost which compelled the members of the Petitioner/assessee to fill again all the details. While filing information on the GSTN portal, repeatedly errors were shown with no explanation about the problem/rectification which need to be done by assessee.

(d) The digital signature facility was not efficient.

(e) GSTN portal was unable to handle the load/rush of filing returns and got frequently hanged.

(f) No proper offline utility to file returns especially places where the internet connectivity is slow.

(g) While filing information on the GSTN portal, repeatedly errors were shown with no explanation about the problem/rectification which need to be done by assessee.

(h) Before final submission of return, in the event of inadvertent error, GSTN portal is not giving any opportunity to assessee for rectification.

(i) Validation error occurred various times while filing the details.

(j) GSTN portal is generally under maintenance from 10:00 PM to 6:00 AM daily. This further unreasonably curtails the limited available time to make compliances.

Many of the assessee's who were looking upon the members of Petitioner Association were not able to file their return on time and thereby have to file the GSTR 3B with penalties. Above mentioned issues were also highlighted by the press article dated 19th August, 2017. Even the above fact is substantiated from the press release dated 29th August, 2017 issued by Press Information Bureau that only 64% of the total assessee were able to file the return of GSTR 3B. A copy of the said press release is annexed and marked herewith as **Annexure 9**. A copy of screenshots of technical errors are annexed and marked herewith as **Annexure 10 Colly**. A copy of the newspapers articles reflecting technical errors are annexed and marked herewith as **Annexure 11 Colly**.

(l) That for filing the form GSTR-3B for the month of July 2017, assessee's are required to furnish the details of outward supplies made and input tax credit utilised by them towards the payment of their output tax liability. That after furnishing the aforesaid details they are required to click on "submit" option provided on the GSTN portal. It is pertinent to note that with the clicking of "submit" button, return has not been filed but the data gets freezed and do not accept any further amendment. This is effectively debarring the assessee's from making corrections in the saved data and therefore a return has to be filed with the wrong particulars.

(m) That under the GST law all the goods and service have been allotted a 6-digit unique Harmonized System of Nomenclature (hereinafter referred as "HSN") code, which the assessee's are required to show on the invoices issued by them and also in the returns to be filed under the GST law as per Rule 46 of CGST Rules, 2017. However, taking into consideration the practical problem of maintaining HSN wise stock details, Respondent No. 1 issued Notification No. 12/2017(Central Tax) dated 28th June, 2017, wherein no details of HSN are required to be mentioned by the assessee's having annual turnover of less than Rs. 1.5 Cr, on the tax invoice issued for the outward supplies made by them. Further, while notifying the TRAN 1 return under the GST law all the assessee's, irrespective of turnover limits, are required to furnish the details of the tax invoice. This requirement of furnishing the HSN Code is in clear violation of the Notification dated 28th June 2017. A copy of the said Notification is annexed herewith and marked as **Annexure 12**. A copy of the screenshot reflecting the problem is annexed herewith and marked as **Annexure 13**.

(n) As per Section 49 of CGST Act, 2017 and Section 49 of RGST Act, 2017 every deposit made towards tax, interest, penalty etc. shall be credited to the

electronic cash ledger of such person. In case of payment of taxes in certain cases, the challans that were submitted by the assessee through the Petitioner's members through NEFT, RTGS or over the counter are being reflected in the cash ledger of the taxpayer after inordinate delay leading to delay in filing of return as the same is the condition precedent for the filing of the return. This has also been identified in the flier issued by the Respondent No. 1 wherein it has advised the registered persons/ assessee to file the return form early to avoid such situation. That such reduction/curtailment of the statutory time of filing return by means of flier is illegal and arbitrary.

(o) That in certain cases, after filling all the details and assessing the tax liability payable by the assessee, when a assessee attempts to make payment against the tax liability from its account, generally the amount gets deducted and challan is subsequently generated. However, to the utter surprise of the assessee, the paid amount did not reflect into the electronic cash ledger of GSTN portal. This led to multiple payments from the assessee towards the same tax liability. Moreover, the assessee may also be held liable for non compliance in filing of the return. A screenshot reflecting the aforesaid problem is annexed herewith and marked as **Annexure 14**.

(p) That Password created on GST portal is not permanent. In certain cases the GSTN portal informed assessee on a number of occasions that the password expired and needs to be changed. It is relevant to note that aforesaid process of changing the password again and again after validation through the registered mobile number or email address of the assessee consumed unnecessary time thereby delaying the return filing process. The said process has not only led to the consumption of unnecessary time of the assessee but also led to their undue harassment.

Transitional Credit related issues

(a) That as per the Impugned Notification dated 21 August, 2017, form GSTR 3B was required to be filed on or before 25th August, 2017. However, if the registered person opted to avail the input tax credit, carried forward from the earlier tax regime, and utilise the same against the tax liability for the month of July 2017 then person had to file the form GST TRAN-1 on or before 28th August, 2017. This restricted timeline is clearly against the Rule 117 of CGST Rules, 2017 and RGST Rules, 2017 which prescribes the time of 90 days to file Form GST TRANS-1. Alternatively, if the registered person does not file the Form GST TRANS -1 on or before 28th August, 2017, cannot use the rightly eligible credit for the payment of GST and shall have to pay the same from its pockets. The said issue regarding availability of credit carried forward from the earlier regime shall remain in case payment of tax for the month of August as well, and the assessee suppliers shall be forced to pay taxes from their own pockets despite availability of credit in case they decide to file the Form GST Trans-1 on the last permitted date. Hence, this provision is not only illegal but also arbitrary.

Other miscellaneous issues

(b) That as per Section 95(a) of CGST Act, 2017 and Section 95(a) of RGST Act, 2017 facility of Advance ruling on specified matters/questions in relation to supply of goods or services or both being undertaken or proposed to be undertaken by the Applicant was to be provided by the Respondent No. 1 and 2. As per Rule 104 of CGST Rules, 2017 and Rule 104 of SGST Rules, 2017, Form GST ARA-01 is required to be filled by the assessee in order to avail the facility of Advance Ruling. However, still no Form GST ARA-01 has been provided by the Government till now. That the assessee's are unable to access the option of advance ruling. Therefore the assessee's in absence of the option of advance ruling are facing great difficulty in the new GST regime in solving issues and addressing the queries of their assessee.

(c) GST helpdesk's reply is usually delayed/unsatisfactory or many times even not provided to the assessee thereby unable to fulfill its purpose.

(d) That the Petitioner vide its letter dated 24 August, also made representation to the Commissioner of State Tax addressing problems/issues faced by its members. However, no response to the said representations has been received till date, thereby leaving the members of the Petitioner and their assessee's in a lurch. A copy of letter/representation addressed by Petitioner is annexed herewith and marked as Annexure 15

7. That it is evident from the submissions made above that the members of the Petitioner have made all the efforts for complying with the legal provisions. However, owing to the technical errors with the GSTN portal, unsupportive responses from the GST helpdesk, curtailed timelimits, lack of infrastructural facility such as internet across the country, the members of the Petitioner are unable to comply with the statutory requirements for their assessee's in a timely manner. Thus the Petitioner have no other equally efficacious alternative remedy in the matter except to approach this Hon'ble Court under Article 226 of the Constitution of India by filing the present writ petition.

8. That the Humble Petitioner craves leave to add or alter or amend any of the aforesaid ground or grounds, if necessary.

9. That the Petitioner on the basis of the aforesaid facts and circumstances submits that they have no other alternative efficacious remedy except to approach this Hon'ble High Court by way of the present writ petition under Article 226 of the Constitution of India for challenging the Impugned Notifications and seeking appropriate directions on the following amongst other grounds set out herein below without prejudice to each other:

GROUND

A. Because the cut off/ time limits in the Impugned Notifications are irrational, unrealistic and overlooks the ground realities and various technical glitches/short comings persisting on GSTN portal and therefore has the effect of curtailing statutory time period provided under the CGST Act, 2017 or RGST Act, 2017.

B. Because the cut off dates/time-limits prescribed under the CGST Act, 2017 or RGST Act, 2017 for compliances are contrary to short comings/ technical glitches on the GSTN Portal or the infrastructure provided by the Respondent Government under the Act. Therefore, cut off

dates prescribed under the Statute becomes unreasonable, whimsical and legally unsustainable.

C. Because as per Rule 3 of CGST Rules, 2017, and Rule 3 of RGST Rules, 2017, state that any person who opts to pay tax under the composite scheme has to file intimation in Form GST CMP-01 within 30 days from the date of grant of provisional registration. The said time limit of 30 days was extended till 16th August, 2017. However, on account of technical glitches at the GSTN portal the assessee's were not able to file the same till the said date. As of now the option for opting for the composition scheme for the Financial year 2017-18 is no longer available at the GSTN portal. Therefore, assessee's of the Petitioner are unable to opt/avail for the composition scheme for this year.

D. Because facility of Advance ruling on specified matters/questions in relation to supply of goods or services or both being undertaken or proposed to be undertaken by the assessee was to be provided by the Respondent No. 1 and 2. As per Rule 104 of CGST Rules, 2017 and Rule 104 of SGST Rules, 2017, Form GST ARA-01 is required to be filled on the GSTN portal by the assessee in order to avail the facility of Advance Ruling. However, still no Form GST ARA-01 has been provided by the Government till the said date on the GSTN portal. Therefore, assessee's in absence of the option of advance ruling are facing great difficulty in the new GST regime in solving their issues. This is also contrary to the right provided under the aforesaid provisions of Statute.

E. Because as per Section 22(2) of the CGST Act, 2017 and the corresponding Section 22 (2) of the RGST Act, 2017, assessee is liable to get the registered under the GST law. Further as per Section 139 of the CGST Act, 2017 and the corresponding Section 139 of the RGST Act, 2017, assessee who is already registered under the existing law shall be issued a certificate of registration on provisional basis which will be replaced by the final registration certificate, pursuant to compliance of prescribed conditions. That for obtaining the final registration certificate Form GST REG-26 has to be submitted electronically by the assessee in accordance with the provisions of Rule 23(2) of the CGST Rules, 2017 and Rule 23(2) of RGST Rules, 2017. That on making the said Application for migration/registration, Application Reference Number is required to be generated. However, in certain cases after submitting the Application for migration/ registration, GSTN portal was not generating the ARN or generating late. Therefore, Petitioner's members were unable to track the status of application of their assessee's and therefore assessee's were unable to proceed subsequently for the supply of the goods or services. Further, non generation of ARN will not enable assessee's to carry on normal business activities or make the compliances under the CGST Act,2017 and the RGST Act,2017 such as filing of returns etc.

F. Because if there is any change in the details furnished in the application for registration by the assessee then per rule 19 of CGST Rules, 2017 and Rule 19 of RGST Rules, 2017, it is required to intimate the same within a period of 15 days by filing form GST REG 14. However, till date, the facility for amendment in registration details is available only in respect of type of non-core particulars. However, the said facility of amendment is not available in respect of certain core particulars such as name, mobile number, email address, place of business, etc. Therefore until and unless facility for amending the core particulars of assessee is provided on the GSTN portal, it will not be able to start any new business activities or operate from any new premises.

G. Because as per Rule 20 and Rule 24 of the CGST Rules, 2017, and Rule 20 and Rule 24 of the RGST Rules, 2017, Form GST REG 16 (in case of regular registration) and Form GST REG 29 (in case of provisional registration) respectively has to be filed, if a person has to opt for cancellation of registration. However, there is no option available for assessee to cancel/surrender such registration on the GSTN portal. Therefore, assessee will unnecessarily be subject to comply with all the provisions under GST Act as applicable on the registered person.

H. Because as per Rule 46 of CGST Rules, 2017 assessee's are required to show HSN code on the invoices issued by them and also in the returns to be filed under the GST law. However, Respondent No. 1 issued Notification No. 12/2017(Central Tax) dated 28th June, 2017, wherein no details of HSN are required to be mentioned by the assessee's having annual turnover of less than Rs. 1.5 Cr, on the tax invoice issued for the outward supplies made by them. Further, while filing the return under the GST law the assessee's are required to furnish the details of the tax invoice issued by them during the tax period in Form GSTR-1. However in the said return details of HSN code are being asked on the GSTN portal. Hence, the demand of asking all the digits of HSN code by the GSTN portal is in clear violation and contrary to the Respondent No. 1's own Notification dated 28th June 2017.

I. Because in case of payment of taxes in certain cases, the challans that were submitted by the assessee through the Petitioner's members through NEFT, RTGS or over the counter are being reflected in the cash ledger of the taxpayer after inordinate delay leading to delay in filing of return as the same is the condition precedent for the filing of the return. Due to unwarranted delay assessee's are subject to reduction/curtailment of their statutory time of filing return by means of flier.

J. Because in certain cases, after filling all the details and assessing the tax liability payable by the assessee, when a assessee attempts to make payment against the tax liability from its account, generally the amount gets deducted and challan is subsequently generated. However, to the utter surprise of the assessee, the paid amount did not reflect into the electronic cash ledger of GSTN portal. As per Section 49 of CGST Act, 2017 and Section 49 of RGST Act, 2017 every deposit made towards tax, interest, penalty etc shall be credited to the electronic cash ledger of such person. Due to this system error assessee will be compelled to make multiple payments towards the same tax liability. This will also lead to undue harassment of the assessee.

K. Because as per Rule 117 of CGST Rules, 2017 and Rule 117 of RGST Rules, 2017 provides for 90 days time limit from the appointed day i.e. 1st July 2017 to submit declaration electronically in form TRAN 1. Through the said form every registered person shall be entitled to avail credit of input tax paid in the earlier tax regime. However, the form TRAN 1 was made available on the GSTN portal only on 21st August, 2017 i.e. only after 51 days of the appointed day, thereby leaving effectively 39 days to the registered person to file TRAN 1 which is contrary to the time-limit prescribed by the aforesaid provisions of the law.

L. Because as per Rule 59 of CGST Rules, 2017 form GSTR 1 has to be filed electronically through the common portal. Utility for filing GSTR 1 was not available till 24th July, 2017. Further, Vide Impugned Notification dated 8th August, 2017, Respondent No. 1 extended the due date of filing of GSTR 1 for the month of July, 2017 and has specified the time period for filing the details of outward supply in Form GSTR 1 to 1st - 5th September, 2017 and for the month of August, 2017 to 16th September, 2017 - 20th September, 2017. Therefore,

Respondent has provided time period of only 5 days i.e. 1st – 5th September, 2017, for filing of details of outward supplies in Form GSTR 1 as against the time period of 10 days i.e. 1st – 10th August, 2017 days as prescribed under the Section 37(1) of CGST Act, 2017. Further, filing of above utility requires internet connectivity, specified system requirements, compilation of voluminous information etc. For all such reasons, it becomes difficult to do timely compliances in such a small time of 10 days. therefor

M. Because, as per Section 38(2) of CGST Act, 2017 every registered person has to file the details of inward supplies after the 10th day but on or before 15th day of the month succeeding the tax period. As per Rule 60 of CGST Rules, 2017, form GSTR 2 has to be filed electronically through the common portal on the basis of details contained in Part A of GSTR 2A. Hence, it becomes practically difficult to file GSTR 2 in case the entries relating to inward are not populated in Part A of GSTR 2A. Vide Impugned Notification No. dated 8th August, 2017, Respondent No. 1 extended the due date of filing of GSTR 2 also for the month of July, 2017 to 6th - 10th September, 2017 and for the month of August, 2017 to 21st September, 2017 - 25th September, 2017. As very short time period has been provided for filing GSTR 1. Hence, it is difficult to comply with the requirement of filing of GSTR 2 on time.

N. Because as per Rule 61 of CGST Rules, 2017 form GSTR 3 has to be filed electronically through the common portal and Part A of GSTR 3 shall be electronically generated on the basis of information furnished through form GSTR 1 and GSTR 2. If proper details of GSTR 1 and GSTR 2 are not generated in part A of GSTR 3, it will be difficult on the part of assessee to comply with filing of GSTR 3. Further, vide Impugned Notification No. dated 8th August, 2017, Respondent No. 1 extended the due date of filing of GSTR 3 for the month of July, 2017 to 11th - 15th September, 2017 and for the month of August, 2017 to 26th September, 2017 - 30th September, 2017. However, till date no utility for filing GSTR 3 has been made available on the GSTN portal. This takes away the statutory right of timely compliance of filing GSTR 3 from the assessee.

O. Because as per Rule 61(5) of CGST Rules, 2017, in case where timelimit for filing GSTR 1 and GSTR 2 has been extended, return in form GSTR 3B in lieu of GSTR 3 may be furnished in such manner and subject to such condition as may be notified by Commissioner. As per Notification No. 21/2017 dated 8th August, 2017, the date for filing GSTR 3B for the month of July is 20th August, 2017. The commissioner in exercise of his power has issued Impugned Notification dated 17th August, 2017 thereby extending the date of filing GSTR 3B for the month of July as 28th August, 2017 only for those assessee who have to file TRAN 1. However, the date for filing the GSTR 3B return for the month of July, 2017 was further extended till 25th August, 2017 for all assessee's and 28th August, 2017 for specified assessee's (person opting for TRAN – 1) by Notification No. 24/2017 dated 21st August, 2017. On account of non availability of TRAN 1 utility till 20th August, 2017, assessee's were required to file TRAN 1 in a short time frame of 7 days so as to avail benefit of balance tax credits of earlier tax regime. Further, the GSTR 1, GSTR 2 and GSTR 3 cannot be filed without filing of form TRAN 1.

P. Because the consequences for non compliance of the timelines stipulated in the Impugned Notifications will have huge financial bearing on the members of the Petitioner.

Q. Because due to server and technical issue of GSTN, members of the Petitioner are facing hardships in complying to the timelines and provisions stipulated under Impugned

notifications or CGST or RGST Act. Further, members of the Petitioner have to devote additional time in order to file return or get itself registered or to do any other compliance task on GSTN. Further, GSTN frequently get hanged and members are not able to proceed in a swift and hassle free manner in order to undertake their ordinary business activities, thereby violating Article 19(1)(g) of Constitution of India.

R. Because in the event of non compliance of timelines in filing the returns on the GSTN portal, as per Section 50 of CGST Act, 2017 and Section 50 of RGST Act, 2017, interest at the rate of 18 % is calculated on the tax liability from the next date of the last date of filing return. Further as per Section 47 of CGST Act, 2017 and Section 47 of RGST Act, 2017 late fees of Rs 100/- per day subject to maximum Rs. 5000/- can also be levied. Therefore, in the case of non compliance of timelines, huge financial repercussions will follow and assessee will be solely liable for the same.

S. Because member of the Petitioner are ready and willing to comply with all the directions and compliances required under the Impugned Notifications or CGST Act, 2017 or RGST Act, 2017. However, due to inadequate infrastructural facility provided by the Respondent Government, members of the Petitioner are facing difficulties in complying with the necessary directions within the given timeframe.

T. Because trade of the assessee's were seriously affected due to non-support of Respondent No. 1 and 2 as many assessee's were unable to get themselves registered on GSTN, thereby affecting their business activities.

U. Because the members of the Petitioner are unable to carry out their professional duty towards their assessee's effectively and efficiently due to the faulty and unprepared GSTN portal and the unsupportive responses of the Respondent Government.

V. Because GSTN was entrusted to manage the entire IT system of GST, however, it has failed to cater the needs or services of the tax payers viz. Registration, filing taxes, maintaining all tax details etc.

W. Because there exists inconsistency between the provisions stipulated under the CGST Act, 2017 or RGST Act 2017 and the facilities provided on GSTN, thereby affecting the tax payers in carrying out their business activities, which is contrary to Article 19 (1)(g) of Constitution of India.

X. Because due to several technical hindrances and server issues on the GSTN portal, hardships are not only faced by assessee but also by the members of the Association as they were asked, in the professional capacity, by their respective assessee's to do varied compliances on the GSTN portal.

Y. Because the Respondents are State within the meaning of Article 12 of the Constitution of India and are required to act in a just, fair and reasonable manner. Every action on the part of the Respondents must be just and reasonable failing which it is liable to be treated as being contrary to the mandate of Article 14 of the Constitution.

Z. Because the Impugned Notification issued by the Respondents are highly arbitrary, discriminative and irrational.

AA. Because the Impugned Notifications are devoid of any public interest, let alone any overwhelming public interest justifying timelines for filing returns.

BB. Because the assessee's will suffer huge loss, if the timelines for filing return as stipulated under the Impugned Notifications are not extended as they would be compelled to face the consequences for non compliance under the CGST Act or SGST Act.

CC. Because other grounds that may be raised during the course of hearing.

PRAYER

It is, therefore, very humbly prayed that this Hon'ble Court may kindly be pleased to: -

(a) Issue appropriate writ, order, direction to the effect declaring that the timelines prescribed under Impugned Notification Number 23/2017- Central Tax (Rate), dated 17th August, 2017, Notification number 24/2017 dated 21st August, 2017 under CGST Act, 2017 and Impugned Notification dated 17th August, 2017 and 21st August, 2017 issued under RGST Act, 2017 for filing returns of GSTR -3B (including person opting to file Form GST TRAN 1) are arbitrary and bad in law.

(b) Issue writ in the nature of certiorari or any other appropriate writ, order, direction to the effect quashing the Impugned Notification Number 23/2017- Central Tax (Rate), dated 17th August, 2017, Notification Number 24/2017 dated 21st August, 2017 under CGST Act, 2017 and Impugned Notification dated 17th August, 2017 and 21st August, 2017 issued under RGST Act, 2017.

(c) Issue appropriate writ, order, direction to the effect declaring that the timelines prescribed under Impugned Notification Number 18/2017, Notification number 19/2017 and Notification Number 20/2017- dated 8th August, 2017 under CGST Act, 2017 for filing returns of GSTR 1, GSTR 2 and GSTR 3 are arbitrary and bad in law.

(d) Issue writ in the nature of certiorari or any other appropriate writ, order, direction to the effect quashing the Impugned Notification Number 18/2017, Notification Number 19/2017 and Notification Number 20/2017- dated 8th August, 2017 under CGST Act, 2017.

(e) Issue writ in the nature of mandamus or any other appropriate writ, order, direction to the Respondents to forthwith rectify/ correct the technical glitches/shortcomings in the GSTN portal and other infrastructural shortcomings as a condition precedent for prescribing/fixing fresh cut-off dates for the various statutory compliances.

(f) Issue writ in the nature of mandamus or any other appropriate writ, order, direction to the respondents to prescribe fresh/new cut-off dates/last dates for various statutory compliances by ensuring affording of reasonable time to the taxpayers/assessee's to comply with statutory provisions and to exercise their legal rights under the CGST Act, 2017 or RGST Act, 2017 .

(g) Issue writ in the nature of mandamus or any other appropriate writ, order, direction to the Respondents to allow amendment in respect of certain essential details

such as name, mobile number, email address, place of business, and other ancillary details, person/assessee with retrospective effect i.e.1st July, 2017.

(h) Issue writ in the nature of mandamus or any other appropriate writ, order, direction to the Respondents to confirm the pending Registration and issue final registration certificate with retrospective effect i.e.1st July, 2017.

(i) Issue writ in the nature of mandamus or any other appropriate writ, order, direction to the Respondents to the effect that the facility of filing the form CMP 01 for the Financial Year 2017-18 to opt for composition scheme should be reopened and adequate time limit to fill the details be provided and also provide facility for opting out with retrospective effect i.e. 1st July, 2017.

(j) Issue writ in the nature of mandamus or any other appropriate writ, order, direction to the Respondents to the effect that assessee should be able to amend the details before submitting the final return.

(k) Issue writ in the nature of mandamus or any other appropriate writ, order, direction to the Respondents to the effect that assessee should be allowed to avail input tax credit even before filing of TRAN 1.

(l) Issue writ in the nature of mandamus or any other appropriate writ, order, direction to the Respondents to the effect declaring that, until technical glitches/shortcomings in the GSTN portal are corrected/rectified, no interest or penalty is calculated or levied on the assessee in the event of non compliance of timelines prescribed under CGST Act, 2017 or RGST Act, 2017.

(m) Issue writ in the nature of mandamus or any other appropriate writ, order, direction to the Respondents to the effect declaring that Form GST ARA-01 should be made available on the GSTN portal in order to avail the facility of Advance Ruling.

(n) Issue writ in the nature of mandamus or any other appropriate writ, order, direction to the Respondents declaring that Form GST REG-01 should be made available on the GSTN portal in order to register as Casual Taxable person.

(o) Allow the present petition with costs.

(p) Allow such further and other reliefs as the nature and circumstances of the Petitioner case may require.

HUMBLE PETITIONER

Through Counsels

[Shri Sanjay Jhanwar/Prakul Khurana/Atul Saxena/Rahul

Lakhwani/Samay Maheshwari/Archana/Abhinav Mathur/Ankit

Sareen/Rajat Sharma/Shubham Goyal]Advocates

Notes:

1. Petitioner has not filed such similar writ petition before this Hon'ble Court or before Hon'ble Supreme Court of India.
2. Notices, Extra Copies etc. shall be filed in accordance with rules after its admission.
3. This writ petition, affidavit etc have not been typed by any staff member of this Hon'ble Court.
4. Since pie papers are not readily available, it has been got typed on stout papers.

Counsel for Petitioner