

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Civil Writ Petition No. 15221/2019

Jodhpur Truck Pvt. Ltd., 11, Binjaram Bhawan, Upper Chopasani Road, Jodhpur Through Its Director Jitendra Kumar Gandhi S/o Brij Mohan Gandhi, Resident Of A-248, Shastri Nagar, Jodhpur

-----Petitioner

Versus

Union Of India, Through The Commissioner (Gst), Ministry Of Finance, Department Of Revenue, Central Board Of Excise And Customs, New Delhi.

Chairman, Gstin, East Wing, Word Mark-1, 4Th Floor, Tower B Erocity, Indira Gandhi International Airport, New Delhi.

Gst, Council

4. The Commissioner, Central Goods And Service Tax Commissionrate, Jodhpur.

-----Respondents

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For Petitioner(s) : Mr. Prahlad Singh Bhati  
For Respondent(s) : Mr. Rajvendra Sarswat

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**JUSTICE DINESH MEHTA**  
**Judgment**

**01/11/2019**

1. By way of the present writ petition, the petitioner has sought a direction to the respondents to accept its GST TRAN-1 form offline or by opening portal.

2. Mr. Bhati, learned counsel for the petitioner informed that the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as the Rules of 2017) have been amended by the notification dated 10.9.2018 and further by a subsequent notification dated 9.10.2019, as a result whereof the due date for furnishing offline GST TRAN-1 form has been extended upto

31.12.2019. Hence, a direction be issued to the respondents to accept its GST TRAN-1 form.

3. Learned counsel for the petitioner submitted that in identical matters, Jaipur Bench of this Court has granted interim orders, directing the respondents to provisionally entertain the GST TRAN-1 and other returns of the petitioner, while making reference of

the order dated 3.10.2018 passed in DBCWP NO.13986/2018 – SRF Ltd. Vs. Additional Commissioner and another order dated 3.12.2018 in DBCWP No.24032/2018 – M/s. Alchem International Pvt. Ltd. vs. UOI & Ors.

4. Apart from relying upon the above interim orders, learned counsel placed for perusal of the Court following judgments in a bid to satisfy the Court that various High Courts have directed the respondents to accept offline return and TRAN-1 form:

- (i) WCP No.7423/2019 : Kusum Enterprises Pvt. Ltd. Vs. UOI & Ors., decided on 12.7.2019 (Delhi High Court)
- (ii) WCP No.8970/2019 : They Tyre Plaza Vs. UOI & Ors., decided on 20.8.2019 (Delhi High Court)
- (iii) WCP No.3243/2019 : VASS Impex Vs.UOI & Ors., decided on 30.7.23019 (Delhi High Court)
- (iv) Writ Petition No.55914/2018 (I-Res) : M/s. Atria Convergence Technologies Ltd. Vs. UOI & Ors., decided on 28.3.2019 (Karnataka High Court)
- (v) WCP No.7218 to 7225/2018 : M/s. Pothys Vs. Principal Chief Commissioner, Goods and Services Tax Act (previously Central Excise & Customs), decided on 18.7.2019 (Madras High Court)
- (vi) WCP No.12812/2019 : Kongovi Pvt. Ltd. Vs. UOI, decided on 28.3.2019. (Karnataka High Court)
- (vii) WCP No.5032/2018 : AF Babu Vs. Goods and Service Tax Council & Ors., decided on 11.7.2018
- (viii) WP (MD) No.18532/2018 : Tara Exports Vs. UOI, decided on 10.9.2018 (Kerala High Court)

(ix) WP No.20978/2018 : Naga Distributors Vs.UOI & Ors., decided on 28.6.2018. (Kerala High Court)

5. Mr. Sarswat, learned counsel for the respondents contended that the amendments in question are being misconstrued by the petitioner. Sub-rule (1A) of Rule 117 is applicable to those registered persons, who have failed to furnish their returns & TRAN-1 forms due to technical fault in the server during the transitional period, which was upto 22.12.2017. The petitioner had neither made any attempt nor has it produced any evidence to show that till the end of the original/extended transitional period, i.e., 22.12.2017, it had ever tried to upload its GST TRAN-1 form. Essence of his argument has been that in absence of any evidence or proof of uploading GST TRAN-1 form, evincing that the failure was a result of technical glitch, the petitioner cannot be given any indulgence/relief.

6. Inviting Court's attention towards Rule 1A inserted by the notification dated 10.9.2018, he argued that the assessee is permitted to furnish offline GST TRAN-1 form, only if he had made an attempt to submit it electronically before 22.12.2017.

7. Heard learned counsel, perused the relevant law and considered the submissions made.

8. For the sake of ready reference, sub-rule (1) & (1A) of the Rules of 2017, around which the whole controversy revolves, are being reproduced hereunder:

“(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 31<sup>st</sup> March, 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."



9. Before embarking upon petitioner's entitlement/eligibility to claim the desired relief, it will be apt to first understand what is form GST TRAN-1.

10. Section 140 of the Central Goods and Service Tax Act, 2017 confers a right to a registered dealer to take credit of 'eligible duties' of the amount lying unutilized on the day immediately preceding the appointed day, in the manner prescribed. First proviso to sub-section (8) of Section 140 postulates that such credit will be admissible subject to a condition that the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day. Rule 117(1) of the Rules of 2017 mandates that every registered person entitled to take credit of input tax under Section 140 of the Act will be required to file a declaration electronically in Form GST TRAN-1, within ninety days of the

appointed day, specifying therein, the amount of input credit to which he is entitled.

11. It is noteworthy that by way of the notification dated 10.9.2018 a new proviso sub-rule (1A) was introduced, while the provision contained in sub-rule (1) remained unaltered. A careful reading of sub-rule (1A) shows that it is not an extension of time of furnishing return or GST TRAN-1; it is rather an enabling provision providing further opportunity to the registered person who could not submit the said declaration by the due date on account of technical difficulties on the common portal.

A bare look at the above-quoted provisions leaves no room for ambiguity that an assessee can be permitted to furnish offline GST TRAN-1 form subject to fulfilling all the three conditions, mentioned hereinfra :

- (i) the assessee failed to upload his GST TRAN-1 form on account of technical glitches on the common portal; and
- (ii) such attempt was made during the currency of transitional period i.e., 22.12.2017.
- (iii) the GST Council has made a recommendation for such extension, being satisfied about such failure.

13. A perusal of the memo of petition shows that the petitioner has neither made any assertion about the date/point of time, when it made attempt to upload his GST TRAN-1 form, nor has it placed any documentary evidence to substantiate such position. The averments made in the writ petition, however indicate that the petitioner has made first such attempt on 23.8.2019; no such request to GST Council seems to have been made.

14. So far as interim orders passed by Jaipur Bench of this Court are concerned, it is not discernible as to whether the petitioners in

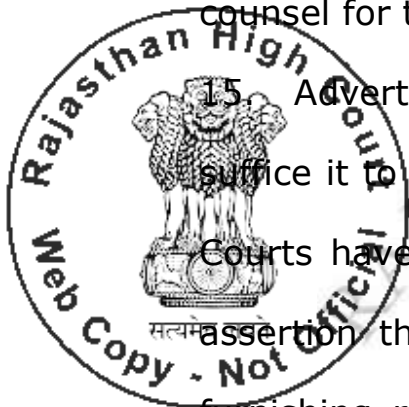
those cases have tried to furnish their return and upload TRAN-1 form within the period prescribed in sub-rule (1) of Rule 117 of the Rules of 2017 or after such date. Whereas in the present case, the petitioner has not been able to prove that he had submitted his return and TRAN-1 within the stipulated period of 90 days or the extended period. Hence, the interim orders cited by learned counsel for the petitioner are not of much help to him.

15. Adverting to the judgments relied upon by learned counsel, suffice it to observe that in each of the cases, the respective High Courts have recorded a categorical finding, based on petitioners' assertion that a genuine effort was made by the petitioner for furnishing return and TRAN-1 form within the period prescribed under Rule 117 of the Rules of 2017 and that there was a technical flaw in the system for which the return & Form TRAN-1 could not be furnished/uploaded.

16. In the case at hands, such fact is conspicuous by its absence and has been specifically disputed by the respondents. The judgments cited by learned counsel for the petitioner are therefore, of little avail to him.

17. Be that as it may, without going into the above dispute, the present writ petition is disposed of with the direction to the respondents to permit the petitioner to submit offline GST TRAN-1 form, subject to furnishing a proof that he had tried to upload GST TRAN-1 form prior to 27.12.2017 and such attempt failed due to technical fault/glitch on the common portal. Needless to mention that petitioner will be required to submit a certificate/recommendation issued by GST Council in this regard.

18. In case all the three requirements enumerated in para no.12 are met/satisfied, the petitioner's offline GST TRAN-1 form shall



be accepted, of course, if it is filed by 31.12.2019 or extended period (if any).

19. For the purpose aforesaid, the petitioner may submit an application before the GST Council to issue the requisite certificate/recommendation, alongwith requisite particulars and evidence and a certified copy of the order instant, within a period of 15 days from today. If the petitioner's assertion is found correct, the GST Council shall issue the recommendation/certificate to the petitioner within a period of three weeks from placement of such application and certified copy of this order.

20. The stay application also stands disposed of accordingly.

**(DINESH MEHTA),J**

24-CPGoyal/-

