

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

Reserved on: 21st December, 2020

Pronounced on: 27th May, 2021

+ **W.P. (C) 1150/2020 & CM APPL. 3814/2020**

SUPER INDIA PAPER PRODUCTS

..... Petitioner

Through: Mr. Mangesh Bhende with Mr. Digajmaan Mishra and Mr. Akshat Malpani, Advocates.

versus

UNION OF INDIA THROUGH MINISTRY OF FINANCE,
SECRETARY & ORS.

..... Respondents

Through: Mr. Ravi Prakash, CGSC for R-1
Mr. Anuj Aggarwal, ASC, GNCTD
with Mr. Shikhar Sheel and
Ms. Ayushi Bansal, Advocates for
R-4 & 5.

+ **W.P. (C) 2326/2020 & CM APPL. 8161/2020 & 32784/2020**

M/S THE BRITISH MOTOR CAR COMPANY (1934) PVT LTD.

..... Petitioner

Through: None.

versus

UNION OF INDIA THROUGH SECRETARY,
MINISTRY OF FINANCE & ORS.

..... Respondents

Through: Ms. Sunieta Ojha, Advocate.
Ms. Sonu Bhatnagar, Senior
Standing Counsel with Ms. Venus
Malhotra, Mr. Vaibhav Joshi
Ms. Mallika Joshi Advocate for R-2
to R-5.

Mr. Anuj Aggarwal, ASC, GNCTD
with Mr. Shikhar Sheel and
Ms. Ayushi Bansal, Advocates.

+ **W.P. (C) 12486/2019**

BENLON INDIA LTD. Petitioner

Through: Mr. Vinay Gupta, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Vivek Goyal, CGSC for UOI.
Mr. Harpreet Singh, Sr. Standing
Counsel with Ms. Suhani Mathur,
Advocate for GST.
Mr. Anuj Aggarwal, ASC, GNCTD
with Mr. Shikhar Sheel and
Ms. Ayushi Bansal, Advocates.

+ **W.P.(C) 1224/2020**

LA PRISTINE BIOCEUTICALS PVT. LTD. Petitioner

Through: None.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Jitesh Vikram Srivastava with
Mr. Prajesh Vikram Srivastava,
Advocates for UOI.
Mr. Harpreet Singh, Sr. Standing
Counsel with Ms. Suhani Mathur,
Advocate for GST.
Mr. Anuj Aggarwal, ASC, GNCTD
with Mr. Shikhar Sheel and
Ms. Ayushi Bansal, Advocates
R-4,5&6.

+ **W.P.(C) 3759/2020**

S. S. AUTOMOTIVE PVT. LTD. Petitioner

Through: Mr. Vineet Bhatia, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Ajay Digpaul, CGSC and Mr. Kamal R. Digpaul, Advocate for R-1/UOI.

Mr. Anuj Aggarwal, ASC, GNCTD with Mr. Shikhar Sheel and Ms. Ayushi Bansal, Advocates for R-2.

Mr. Sandeep Kumar with Mr. Kunal Sharma, Sr. Standing Counsel for Income Tax Department.

+ **W.P.(C) 3760/2020**

ALSTONE INTERNATIONAL Petitioner

Through: Mr. Vineet Bhatia, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Ajay Digpaul, CGSC and Mr. Kamal R. Digpaul, Advocate for R-1/UOI.

Mr. Sandeep Kumar with Mr. Kunal Sharma, Sr. Standing Counsel for Income Tax Department.

Mr. Anuj Aggarwal, ASC, GNCTD with Mr. Shikhar Sheel and Ms. Ayushi Bansal, Advocates for R-4.

+ **W.P.(C) 3761/2020**

ESS AAR AUTOMOTIVE PVT. LTD. Petitioner

Through: Mr. Vineet Bhatia, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Anil Soni, CGSC with Mr. Devesh Dubey, Advocate for R-1. Mr. Anuj Aggarwal, ASC, GNCTD with Mr. Shikhar Sheel and Ms. Ayushi Bansal, Advocates for R-2.

+ **W.P.(C) 3766/2020**

SHRINIWAS TIN INDUSTRIES PVT. LTD. Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate with Mr. Puneet Rai and Mr. Vaibhav Kulkarni, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Anil Soni, CGSC with Mr. Devesh Dubey, Advocate for Respondents No.1 and 2. Ms. Sonu Bhatnagar, Senior Standing Counsel with Ms. Venus Malhotra, Mr. Vaibhav Joshi Ms. Mallika Joshi Advocate for R-3 & 5. Mr. Anuj Aggarwal, ASC, GNCTD with Mr. Shikhar Sheel and Ms. Ayushi Bansal, Advocates. for R-4.

+ **W.P.(C) 12162/2019 & CM APPL.49749/2019**

ARIEN SALES & MARKETING

..... Petitioner

Through: Mr. Rajesh Jain with Mr. Virag
Tiwari and Mr. Ramashish,
Advocates.

versus

COMMISSIONER, DELHI GOODS & SERVICES TAX & ANR.

..... Respondents

Through: Mr. Anuj Aggarwal,
ASC, GNCTD with Mr. Shikhar
Sheel and Ms. Ayushi Bansal,
Advocates.

Mr. Virender Pratap Singh Charak,
with Mr. Kapil Gaur, Mr. Vaishnav
Kirti Singh, Mr. Shubham Ahuja
and Mr. Sanjay Singh Chauhan,
Advocates for UOI.

+ **W.P. (C) 12686/2019 & CM APPL.51786/2019**

RIGOSS ESTATE NETWORK PVT. LTD.

..... Petitioner

Through: Mr. Ruchir Bhatia, Advocate with
Ms. Madhura M. N, Advocate.

versus

UNION OF INDIA THROUGH
SECRETARY & ORS.

..... Respondents

Through: Mr. Anuj Aggarwal, ASC, GNCTD
with Mr. Shikhar Sheel and
Ms. Ayushi Bansal, Advocates
for R-3.

+ **W.P. (C) 3793/2020**

SHARDA CHEMICALS

..... Petitioner

Through: Mr. Puneet Rai, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Bhagwan Swarup Shukla,
CGSC for UOI.
Mr. Anuj Aggarwal, ASC, GNCTD
with Mr. Shikhar Sheel and
Ms. Ayushi Bansal, Advocates.

+ **W.P.(C) 3988/2020**

KALPATRU ENTERPRISES THROUGH ITS
PROPRITOR NEERAJ JAIN

..... Petitioner

Through: Mr. Abhishek Garg, Advocate.

versus

UNION OF INDIA THROUGH ITS
SECRETARY MINISTRY OF FINANCE & ORS.

..... Respondents

Through: Mr. Sanjeev Uniyal and Mr.
Dhawal Uniyal, Advocates for
Respondent No.1.
Mr. Harpreet Singh, Sr. Standing
Counsel with Ms. Suhani Mathur,
Advocate for GST.

+ **W.P.(C) 3996/2020**

BALAJI IMPEX

..... Petitioner

Through: Mr. Abhishek Garg, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ravi Prakash, CGSC with
Mr. Farman Ali and Ms. Meghna
Nimbekar, Advocates for R-1.

+ **W.P.(C) 12608/2019**

DELHI WATCH MARKETING PVT LTD Petitioner

Through: Mr. Puneet Agrawal with Ms. Hemlata Rawat and Mr. Yuvraj Singh, Advocates.

versus

UNION OF INDIA THROUGH ITS SECRETARY (REVENUE) & ORS. Respondents

Through: Mr. Harpreet Singh, Senior Standing Counsel with Ms. Suhani Mathur, Advocate for GST.
Mr. Anuj Aggarwal, ASC for GNCTD with Mr. Shikhar Sheel and Ms. Ayushi Bansal, Advocates for R-2.

+ **W.P.(C) 1232/2020**

ULTRATECH TEXTURES PAINTS PVT. LTD. Petitioner

Through: None.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur, Advocate for GST.

+ **W.P.(C) 3690/2020**

SPEEGO VEHICLES PVT. LTD. Petitioner

Through: Mr. Vineet Bhatia and Mr. Chanderkant Singh, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Asheesh Jain, CGSC with Mr.

Amrit Singh, Advocate for R-1.
Mr. Harpreet Singh, Sr. Standing
Counsel with Ms. Suhani Mathur,
Advocate for GST.

+ **W.P. (C) 5847/2020**

SUMET PRASAD & SONS

..... Petitioner

Through: None

versus

UNION OF INDIA, THROUGH SECRETARY,
MINISTRY OF FINANCE & ORS.

.....Respondents

Through: Mr. Kavindra Gill, Advocate for
UOI.
Mr. Anuj Aggarwal, ASC, GNCTD
with Mr. Shikhar Sheel and
Ms. Ayushi Bansal, Advocates.

+ **W.P.(C) 3758/2020**

WELDMART INTERNATIONAL

..... Petitioner

Through: Mr. Vineet Bhatia, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Dev P Bhardwaj, CGSC for
UOI.
Mr. Anuj Aggarwal, ASC, GNCTD
with Mr. Shikhar Sheel and
Ms. Ayushi Bansal, Advocates
for R-2 and R-3.

+ **W.P.(C) 13680/2019**

PRIYANJAL ELECTRONICS

..... Petitioner

Through: Mr. Ajay Jain, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur, Advocate for GST.
Mr. Anuj Aggarwal, ASC, GNCTD with Mr. Shikhar Sheel and Ms. Ayushi Bansal, Advocates for R-3.

+ **W.P. (C) 1831/2020 & CM APPL.6347/2020**

JUNIPER HOTELS PRIVATE LIMITED

..... Petitioner

Through: Mr. Mangesh Bhende with Mr. Digajmaan Mishra and Mr. Akshat Malpani, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur, Advocate for GST.

+ **W.P. (C) 7111/2020**

HL PROMOTERS PRIVATE LTD.

..... Petitioner

Through: Mr. Ashok K. Bhardwaj and Mr. Manish Kr. Hirani, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ravi Prakash, CGSC with Mr. Farman Ali and Ms. Meghna Nimbekar, Advocates for Respondent No. 1.
Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur, Advocate for GST.

+ **W.P. (C) 8583/2020**

M/S. GENEXT INTERNATIONAL Petitioner

Through: Mr. M. A. Ansari with Mr. Khursheed Ahmad, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Bhagwan Swarup Shukla, CGSC and Mr. Ravi Prakash, CGSC with Mr. Sarvan Kumar Shukla, Advocates for UOI.
Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur, Advocate for GST.

+ **W.P.(C) 221/2020 & CM APPL. 708/2020**

U.K PAINTS (INDIA) PVT. LIMITED. Petitioner

Through: Mr. Puneet Agrawal with Ms. Hemlata Rawat and Mr. Yuvraj Singh, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Harpreet Singh, Senior

Standing Counsel with Ms. Suhani Mathur, Advocate for GST.
Mr. Kamal Kant Jha, Senior Panel Counsel for Govt. of India.

+ **W.P.(C) 3658/2020**

SCANDIA MOTORCARS PVT. LTD. Petitioner

Through: Mr. Nishant Mittal, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Asheesh Jain, CGSC with Mr. Amrit Singh, Advocate for R-1.
Mr. Sandeep Kumar with Mr. Kunal Sharma, Sr. Standing Counsel for Income Tax Department.
Mr. Dhananjaya Mishra, Advocate for R-6 and 7.

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

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J.

1. The common thread in this present batch of petitions is that they pertain to transition of CENVAT credit from the erstwhile indirect tax regime to the present Goods and Services Tax ('GST') system by virtue of a right specifically conferred on the taxpayers for smooth migration into the new

indirect tax regime.

I. BRIEF BACKGROUND:

2. Chapter XX of the CGST Act, 2017 (hereinafter “**the Act**”), which deals with transitional provisions, allows for transition of unutilized CENVAT credit available under the previous regime. The statute provides for filing form GST TRAN-1 (hereinafter “**TRAN-1 Form**”) by furnishing details of amount of CENVAT credit sought to be carried forward in the return, relating to the period ending with the day immediately preceding the appointed date, i.e., 1st July, 2017. The last extended date for filing the TRAN-1 Form, was prescribed as 27th December, 2017.

3. Unfortunately, the transitionary mechanism was not smooth and easy for numerous taxpayers. Several factors, including technical glitches and shortcomings in the online system, prevented or obstructed them from filing the TRAN-1 Form by the above deadline. Many taxpayers complained of poor/low internet bandwidth and cited various other technological hindrances while accessing the online portal closer to the deadline, that hindered their attempts. After the cut-off date, the filing was blocked on the online portal.

4. Taxpayers narrating their grievances petitioned this Court and several other High Courts in the country seeking directions to Respondent to re-open the portal. Concurrently, the Government took cognizance of the complaints and acknowledged the genuine problems faced by the taxpayers. Resultantly, a redressal mechanism to address the IT-related

glitches was set up, being the IT Grievance Redressal Committee ('ITGRC'). The necessary amendments in the CGST Rules, 2017 (hereinafter "**the Rules**") were also made by incorporating Rules 117(1A) and 120A, and correspondingly, the deadline for filing TRAN-1 Form was extended.

5. While this provided an opportunity to taxpayers to file the TRAN-1 Form, the benefit was confined only to a specific class of cases where taxpayers could not submit the declaration before the due date purely on account of technical difficulties on the common portal and in respect of whom the GST Council had made a recommendation for such extension. Taxpayers had to furnish digital evidence before the Nodal Officer of the ITGRC showing their attempt to file the form before the deadline, by way of screenshots, correspondence etc.

6. Hence, all the taxpayers could not avail the benefit of this relaxation, and this batch of Petitioners broadly fall in that category. Few of them have digital evidence to support their case but raise the grievance that Respondents have dealt with them in an unfair and arbitrary manner by unreasonably rejecting the proof adduced by them. Some of the taxpayers do not possess evidence like the screenshots to support their case but contend that digital evidence alone should not be the yardstick to test the genuineness of their claims. Others acknowledge that they committed mistakes while filing the TRAN-1 Form as they were not well-versed with the online system and found it cumbersome and complicated and make a plea that they should be afforded another opportunity to claim their legally vested right.

The view taken by this Court and other High Courts

7. The difficulties faced by the taxpayers while filing the online TRAN-1 Form, occurring largely on account of the technical glitches, have been noted in a plethora of decisions by both this Court as well as other High Courts. It has been acknowledged that the unutilized input tax credit is a vested right of the taxpayers under Article 300A of the Constitution of India, 1950 that cannot be taken away on account of technical grounds.¹ It has also been appreciated that, since GST is an electronic-based tax regime, a large segment of the country would need time to be conversant with the system and thus deserve a second chance. It is recognized that many taxpayers do not possess the know-how or the means to file electronic forms, and further considering that the transition happened rather rapidly, they should be given the benefit of the doubt. As on date, there are numerous decisions dealing with varied challenges faced by the taxpayers in meeting the deadline in filing the TRAN-1 Form. In all such situations, this Court has consistently directed the GST authorities to reopen the portal or to allow manual filing of the TRAN-1 Form.² Some

¹ *Siddharth Enterprises v. Nodal Officer*, 2019 (29) G.S.T.L. 664

² *A.B. Pal Electricals Pvt. Ltd. v. Union of India and Ors.*, 2020 (33) G.S.T.L. 8;
Bhargava Motors v. Union of India, 2019 (26) G.S.T.L. 164;
Triveni Needles Pvt. Ltd. v. Union of India and Ors., (2020) 77 GST 550 (Delhi);
Krish Automotors Private Limited v. Union of India and Ors., 2019 (29) G.S.T.L. 584;
Blue Bird Pure Pvt. Ltd. v. Union of India and Ors., 2019 (29) G.S.T.L. 660;
SKH Sheet Metals Components v. Union of India and Ors., 2020 (38) G.S.T.L.592;
SRC Aviation (P) Ltd. v. Union of India and Ors., MANU/DE/4345/2019;
Sikka Motors Pvt. Ltd. v. Central Goods and Services Tax and Ors., (2019) 70 GSTR 273 (Delhi);
Chogori India Retail Limited v. Union of India, 2019 (29) G.S.T.L. 602;
The Tyre Plaza v. Union of India, 2019 (30) G.S.T.L.222;
Aman Motors v. Union of India and Ors., (2020) 78 GSTR 421 (Delhi);
Aagman Services Private Limited v. Union of India and Ors., (2020) 77 GST 530 (Delhi);
Vertiv Energy Pvt. Ltd. v. Union of India, (2020) 79 GSTR 4 (Delhi);
Lease Plan India Private Limited v. GNCTD and Ors., (2020) 72 GSTR 116 (Delhi);

such judgments have been assailed by the Respondents before the Supreme Court, and from amongst them, a few have been rejected while others are pending.³ We are also aware that some High Courts have taken a view that is different from the one taken by this Court, but nonetheless, this Court has consistently upheld the right of taxpayers to claim transition of CENVAT credit.⁴

8. We must stress that shortcomings faced in the online system during the trial-and-error phase of GST is not the sole ground for allowing the petitions in favour of the taxpayers. Several courts, including this Court, have delved into the rationality/validity of the statutory provisions. Recently, in a batch of petitions, this Court had the occasion to deal with the legal effect of the time period prescribed time under Rule 117 of the Rules for filing the TRAN-1 Form i.e., whether the said provision was directory or mandatory, and concluded that the period was merely directory.⁵ In the said decision, the Court also delved into the irrationality of Rule 117(1A), since it applied to only one class of persons who faced

Uninav Developers Pvt. Ltd. v. Union of India and Ors., MANU/DE/4665/2019;
Godrej & Boyce Mfg. Co. Ltd. v. Union of India and Ors., (2020) 73 GSTR 107 (Delhi);
Adfert Technologies Pvt. Ltd. and Ors. v. Union of India and Ors., (2020) 73 GSTR 267 (P&H);
Jakap Metind Pvt. Ltd. v. Union of India, 2019 (31) G.S.T.L. 422;
Siddharth Enterprises v. Nodal Officer, 2019 (29) G.S.T.L. 664;
Krishna Oleo Chemical India Limited v. Union of India, (2020) 80 GST 158 (Gujarat);
Heritage Lifestyles and Developers Pvt Ltd v. The Union of India and Ors., 2020 (43) G.S.T.L. 33.

³ *Union of India v. Chogori India Retail Limited*, SLP (C.) No. 7224/2020, Order dated 3rd June, 2020;
Union of India v. Adfert Technologies Pvt. Ltd., SLP (C.) No. 4408/2020, dated 28th February, 2020;

⁴ *P.R. Mani Electronics v. Union of India and Ors.*, (2020) 80 GSTR 389 (Mad.);
Willowood Chemicals Pvt. Ltd. v. Union of India, (2018) 58 GSTR 310 (Guj.);
Shree Motors and Ors. v. Union of India and Ors., 2020 (35) G.S.T.L. 375;
Nelco Limited v. The Union of India and Ors., 2020 (36) G.S.T.L. 24.

⁵ *Brand Equity Treaties Limited v. Union of India & Ors.*, 2020 SCC Online Del. 1698. Pending SLP
(*Union of India v. Brand Equity Treaties Limited & Ors.*, SLP (C) No. 7425-7428/2020).

technical difficulties on the common portal, without defining the said concept anywhere in the Act or the Rules framed thereunder. It observed that the benefit of the decision should be available to all the taxpayers and directed the Revenue to publicize the judgment on their website and by other means so that taxpayers who were unable to file the TRAN-1 Form within the specified date but were otherwise within the period of three years, would be able to take benefit of the judgment and file the requisite TRAN-1 Form. However, the Respondents have assailed the aforesaid decision, and presently, by virtue of the order of the Supreme Court dated 19th June, 2020, the operation of the aforesaid judgment is stayed.

9. We would be remiss to not mention a legislative change which has been brought about, as well. By virtue of the Finance Act, 2020, an amendment has been introduced in the relevant provisions, with retrospective effect from 1st July, 2017, amending Section 140 of the Act by inserting the words “within such time”. On the strength of this amendment, while dealing with another case relating to filing of TRAN-1 Forms, being *SKH Sheet Metal Components v. Union of India*⁶, the Revenue sought to contend that the ratio of the judgment of *Brand Equity* (*supra*) ceases to apply. However, the said argument was rejected. We must also note that when we rendered the decision in *SKH Sheet Metal* (*supra*), the SLP filed by the Revenue against the *Brand Equity* (*supra*) had not been taken up by the Supreme Court and the stay order referred had not been passed. In this background, when these batch of petitions came up for hearing, this Court, taking note of the pending challenge in *Brand Equity* (*supra*), adjourned

⁶ (2020) 80 GST 1 (Delhi).

the hearing to await the outcome of the afore-noted matter.

10. Later, counsel for the Petitioners urged that since the facts arising in the present batch of matters have a different hue, the present petitions may be adjudicated upon, notwithstanding the pending challenge in **Brand Equity** (*supra*). Accordingly, we proceeded to hear the arguments. When the hearing commenced on 14th December, 2020, we noticed that there were multiple issues regarding the TRAN-1 Form and asked the counsels to file a summary note so that we could club the present petitions into smaller batches on the basis of commonality of issues involved therein.

11. In this backdrop, we have categorized the petitions into four batches. The first three batches are being dealt with in the present judgment, and the remainder of the cases are being decided by separate judgments. For the sake of convenience, the three batches dealt with in the present judgment are tabulated below:

| BATCH NUMBER | COMMONALITY | WRIT PETITION NUMBERS |
|--------------|--|---|
| First Batch | Where taxpayers have evidence of attempt to file TRAN-1 Form. | Writ Petition Nos. 1150/2020, 2326/2020, 12486/2019, 1224/2020, 3759/2020, 3760/2020, 3761/2020 and 3766/2020. |
| Second Batch | Where taxpayers do not have any proof of attempt to file TRAN-1 Form | W.P.(C.) Nos. 12162/2019, 12686/2019, 3793/2020, 3988/2020, 3996/2020, 12608/2019, 1232/2020, 3690/2020, 5847/2020, 3758/2020, 13680/2019 |

| | | |
|-------------|--|---|
| | | and 1831/2020 |
| Third Batch | Petitioners have submitted the TRAN-1 Form within the prescribed time period but their grievance stems from their inability to revise/rectify the TRAN-1 Form filed by them. | W.P.(C.) Nos. 7111/2020, 8583/2020, 221/2020 and 3658/2020. |

II. FIRST BATCH OF CASES

12. The first batch of cases is where the Petitioners have placed the screenshots and/or communication to support their stance of having attempted to file the TRAN-1 Form prior to the deadline i.e., 27th December, 2017.

A. Facts

13. The facts in all these petitions are similar, and in the interest of completeness, the necessary facts are being culled out hereinbelow-

- i) **W.P.(C.) No. 1150/2020**- the Petitioner had a stock of approximately Rs. 3,05,54,086/- on which the Petitioner was entitled to Excise Duty credit of approximately Rs. 14,05,848/- as per the proviso to Section 140(3) of the Act. The Petitioner could not upload the TRAN-1 Form after various attempts due to heavy traffic on the GSTIN portal. Thus, in order to claim the benefit of the excise duty against the stocks held for the period ending on 30th June, 2017, the Petitioner sought to manually file the TRAN-1

Form. This is evidenced by the communication placed on record dated 27th December, 2017 which is Annexure P-4 to the writ petition. This communication was followed up by a reminder dated 4th February, 2018 written to the VATO, then followed by further communications dated 28th April, 2018 and 8th May, 2018 written to the Jurisdictional/Nodal Officer, SGST/CGST. After the amendment to Rule 117, the Petitioner approached the authority thereunder in terms of sub-Rule (1A) of Rule 117 but, it was to no avail.

- ii) **W.P.(C.) No. 2326/2020**- The Petitioner was entitled to a claim of Rs. 25,51,002/- as input tax credit. In this case, the Petitioner attempted to file the TRAN-1 Form on 27th December, 2017 but could not do so. Thereafter, a communication dated 29th December, 2017 was addressed by the Petitioner to the authorities informing them of the Petitioner's inability to file the TRAN-1 Form which is annexed as Annexure P-4 to the writ petition. The Petitioner has annexed a screenshot of the GST portal as on 27th December, 2017 as Annexure P-3. Thereafter, the Petitioner received a reply from the GSTN on 29th December, 2017 that the issue highlighted by him was being worked on. However, on 12th March, 2018, the Petitioner received another mail stating that there was no information available regarding filing of TRAN-1 Form after the cut-off date i.e., 27th December, 2017. In light of the circular dated 3rd April, 2018 which extended the filing of TRAN-1 Form for those persons who were in possession of evidence of technical glitches

(hereinafter “*April Circular*”), the Petitioner addressed letters to Respondents dated 12th July, 2018 and 14th February, 2019. The same were rejected vide communication dated 27th March, 2019. The Petitioner reiterated its concerns in its letter dated 12th April, 2019. Thereafter, a communication dated 8th July, 2019 was addressed by the Assistant Commissioner (Systems) to the Principal Nodal Officer, ITGRC wherein it was stated that the Petitioner’s request was genuine and the same was to be forwarded to GSTN for necessary action. The last communication addressed by the Petitioner was on 28th January, 2020 but, nothing further has been heard from the Respondent.

- iii) **W.P.(C.) No. 12486/2019**- The Petitioner attempted to file TRAN-1 Form on multiple occasions prior to 27th December, 2017 but could not file it within time on account of system failure in accepting the information. On 28th December, 2017, the Petitioner addressed a letter to the Commissioner, GST expressing the inability and submitting details of the transitional credit which it was claiming. The letter along with the details are annexed as Annexure P-4 to the writ petition. The Petitioner has placed reliance of an order of this Court dated 10th April, 2018 in another petition filed by the present Petitioner whereby the Court granted liberty to avail the benefit of the April Circular. The Petitioner submitted a representation to the Commissioner, CGST on 19th April, 2018 apprising him of the difficulty faced by the Petitioner in uploading the details in the TRAN-1 Form. The Petitioner has also placed reliance on an order

dated 1st August, 2018 whereby this Court, in a batch of petitions, directed that if the claims of any assessee were to be rejected, they must be done *vide* a speaking order. In pursuance thereto, another representation dated 6th September, 2018 was addressed to the GST Officer, SGST seeking a response to the grievances raised by the Petitioner. The last communication was dated 28th March, 2019 but again, no response was received to the same.

- iv) **W.P.(C.) No. 1224/2020**- The Petitioner evaluated that it was in possession of unutilized ITC of Rs. 5,06,555/- on account of Excise Duty on the closing stock of Rs. 25,66,469/- lying on 30th June, 2017. Petitioner had successfully filed the TRAN-1 Form on 26th December, 2017 and even received an e-mail from the Department of Trade & Taxes, Govt. of NCT of Delhi, acknowledging receipt the same, which is annexed to the writ petition as Annexure- 5. The Petitioner addressed its grievance vide letter dated 8th January, 2018 wherein it stated that despite having successfully filed the TRAN-1 Form, the electronic credit ledger did not reflect the credit claimed by the Petitioner. On 9th January, 2018, the Petitioner received a response from the GSTN Helpdesk providing a ticket number and stated that the last date for filing the TRAN-1 Form was 27th December, 2017. Further communications were also received from the GST Helpdesk on 14th January, 2018 and 15th January, 2018, but no concrete assistance was provided. After the April Circular, the Petitioner moved an application dated 23rd April, 2018 for redressal of its grievances. The same was responded to by the GSTO (Nodal

Officer GST), Department of Trade & Taxes, New Delhi *vide* its communication dated 20th June, 2019, wherein it was stated that the ITGRC had rejected the Petitioner's application. The final communication made by the Petitioner in this regard was on 20th November, 2019.

- v) **W.P.(C.) No. 3759/2020**- As on 30th June, 2017, the Petitioner had a credit of eligible duties amounting to Rs. 29,03,018/- which it was entitled to claim as transitional credit as per Section 140 of the Act. The Petitioner made attempts to file TRAN-1 Form prior to 27th December, 2017 but was assailed with technical glitches. This is evidenced by the letters written by the Petitioner dated 20th December, 2017 and 26th December, 2017 to the Commissioner, DGST and Proper Officer, DGST respectively, which are annexed as Annexures P-2 and P-3 respectively. Further, letters were addressed to the Proper Officer, DGST and Commissioner, DGST on 15th May, 2018 and 5th June, 2020.
- vi) **W.P.(C.) No. 3760/2020**- The Petitioner was entitled to a transitional credit of eligible duties of Rs. 1,12,79,082/-. The Petitioner attempted to file its TRAN-1 Form on 27th December, 2017 but was unable to upload it successfully. Further attempts were made on 28th and 29th December, 2017 but were unsuccessful. Eventually, the Petitioner resorted to sending manual copies of its TRAN-1 Form to all respective Commissioners on 30th December, 2017. The copy of the manual TRAN-1 Form along with the speed post acknowledgements are annexed as Annexure P-2 to the writ

petition. The Petitioner addressed a communication to the Commissioner, DGST on 19th June, 2020 seeking redressal of its grievance.

- vii) **W.P.(C.) 3761/2020**- The Petitioner was entitled to a total transitional credit of Rs.71,32,298/- The Petitioner made attempts to file its TRAN-1 Form prior to 27th December, 2017 but could not do so on account of technical glitches. This is evidenced by the letters written by the Petitioner to the Commissioner, DGST dated 20th December, 2017 and 26th December, 2017, which are annexed as Annexures P-2 and P-3 to the writ petition, respectively. Further communications were addressed to the Commissioner, DGST on 15th May, 2018 and 5th June, 2020.
- viii) **W.P.(C.) No. 3766/2020**- The Petitioner made attempts to file TRAN-1 Form on and before 27th December, 2017 but was unable to do so due to technical glitches in the GST portal. The Petitioner filed a grievance with the GST Helpdesk on 25th January, 2018 expressing its inability to file TRAN-1 Form. The response to the grievance dated 27th January, 2018 is annexed as Annexure P-2 to the writ petition. Further, the Petitioner has also annexed screenshots of the GST Portal as Annexure P-1. Thereafter, the Petitioner received emails from the GST Helpdesk on 18th March, 2018 and 5th April, 2018 wherein it was stated that the problem had not been resolved till date. Later, the Petitioner raised another ticket on the GST Helpdesk seeking a solution to its grievance. The same was responded to on 27th November, 2018 and the Petitioner was

directed to approach the GST Commissioner. After the Petitioner approached the Commissioner, a reply was received on 10th January, 2019 whereby a personal hearing was granted to the Petitioner. On the date of the personal hearing, the Petitioner's representative made extensive submissions before the Assistant Commissioner, CGST but, the matter did not proceed further. The Petitioner was constrained to send a reminder letter on 13th March, 2019 to which a reply was received on 20th March, 2019 whereby the Petitioner was informed that its case had been forwarded to the Systems Branch who had in turn forwarded the grievance to Pr. Nodal Officer, ITGRC, CCO Delhi. On 26th March, 2019 the Petitioner received a letter from the Assistant Commissioner, CGST to the Assistant Commissioner, Dept. of Trade and Taxes wherein it was stated that the Petitioner fell within the jurisdiction of the State GST authorities and accordingly, the case of the Petitioner was being forwarded for necessary action. The Petitioner again sent a request letter to the Commissioner, CGST, South Delhi vide letter dated 31st December, 2019 as well as a letter to the State GST authorities to re-open the GST Portal. It received a copy of a letter sent by the Assistant Commissioner, CGST to the Assistant Commissioner, Dept. of Trade and Taxes wherein it was once again reiterated that the Petitioner fell within the jurisdiction of the State GST authorities. The last communication addressed by the Petitioner to the State GST authorities was on 17th May, 2020.

B. Contention of Respondents

14. In response to the grievance raised above, the Respondents, *per contra*, contend that CENVAT credit is not an absolute or vested right but a creation of statute, and can only be availed of within the boundaries of the statute and not *de hors* it. It was further argued that a rule fixing a time limit does not amount to taking away any vested right.⁷ The statutorily prescribed time period must be adhered to strictly, as the limitation in filing any form or return is needed for effective administration of the tax regime and so that the administrative machinery functions properly. However, in recognition of technical difficulties being faced by the taxpayers, on recommendations of GST Council in its 26th Meeting held on 10th March, 2018 the ITGRC was put in place *vide* April Circular to address difficulties faced by the taxpayers on account of technical glitches on the GST Portal. Further, *vide* notification dated 10th September, 2018, a sub-rule (1A) was inserted in Rule 117 of the Rules to extend the last date for submitting the electronic declaration TRAN-1 Form and TRAN-2 Form not beyond 31st March, 2019 and 30th April, 2019 respectively in respect of registered persons who could not submit the said declaration on account of technical difficulties and in respect of whom the Council has made a recommendation for such extension. Further, sub-rule (1A) of Rule 117 of CGST Rules, 2017 was amended *vide* notification dated 9th October, 2019 whereby the last date for submitting declaration electronically in TRAN-1 Form was further extended to 31st December, 2019 in respect of registered persons who could not submit the said declaration by due date on account of technical glitches and in respect of

whom the GST Council has made a recommendation for such extension. The last date under Sub-Rule (1A) of Rule 117 of the Rules was again extended *vide* notification dated 1st January, 2020 for submitting the declaration electronically in TRAN-1 Form and TRAN-2 Form to 31st March, 2020 and 30th April, 2020 respectively in such cases. Therefore, it cannot be contended that the Petitioners were not given ample opportunities to seek redressal of their grievances as the Revenue authorities themselves have created and provided for a mechanism to deal with the problems arising out of the GST Portal.

C. Analysis (first batch of cases)

15. In all the aforesaid cases, all such Petitioners have genuinely attempted to file TRAN-1 Form within time and have also taken care to preserve some evidence which is now being relied upon in support of their contention. This proof of submission however has not been accepted by the Respondents. The stand of the Respondent is that in such matters there is no technical anomaly in filing of the TRAN-1 Form on the GST portal. This Court in several decisions has given benefit to such taxpayers and even to those who did not have any evidence to support their filing of TRAN-1 Form within time. In *SRC Aviation (P) Ltd. v. Union of India and Ors.*,⁸ this Court, after recording the fact that Petitioner has placed a copy of the screenshot evidencing that it was unable to file the TRAN-1 Form on the GST Portal, allowed it to file the TRAN-1 Form

⁷ *Osram Surya Pvt. Ltd. v. Commissioner of Central Excise, Indore*, (2002) 9 SCC 20

⁸ MANU/DE/4345/2019

electronically, or manually. The relevant portion of *SRC Aviation* (*supra*) reads as under:

“9. The factual position in the present case is not any different. At this juncture, it may be noted that as per Notification No. 49/2019: MANU/CGST/0051/2019 dated 09.10.2019 issued by CBIC, the date prescribed for filing of Form GST TRAN-1 under Rule 117 (1A) of the CGST Rules has been extended to 31.12.2019. This itself demonstrates that the Respondents recognise the fact that the registered persons were not able to upload the Form GST TRAN-1 due to the glitches in the system. It is not fair to expect that each person who may not have been able to upload the Form GST TRAN-1 should have preserved some evidence of it-such as, by taking a screen shot. Many of the registered dealers/traders come from rural/semiliterate background. They may not have had the presence of mind to create any record of their having tried, and failed, to upload the Form GST TRAN-1. They cannot be made to suffer in this background, particularly, when the systems of the Respondents were not efficient. From the documents placed on record, it emanates that the Respondents have no cogent ground to deny the benefit of the Notification No. 49/2019: MANU/CGST/0051/2019 dated 09.10.2019 issued specifically to grant relief to taxpayers who faced difficulty in filing Form GST TRAN-1 due to technical glitches. Thereafter when he engaged in communication with the respondent, there was no genuine ground forthcoming except for stating that the due date for filing of Form GST TRAN-1 was over.

10. We may further add that the credit standing in favour of an assessee is "property" and the assessee could not be deprived of the said property save by authority of law in terms of Article 300 (A) of the Constitution of India. There is no law brought to our notice which extinguishes the said right to property of the assessee in the credit standing in their favour.

11. Thus, we allow the present petition and direct the respondents to either open the online portal so as to enable the

petitioner to file the Form TRAN-1 electronically, or to accept the same manually on or before 31.12.2019. Respondents shall process the petitioner's claim in accordance with law once the Form GST TRAN-1 is filed. The petition is allowed in the aforesaid terms.”

In *Triveni Needles Pvt. Ltd. v. Union of India and Ors.*,⁹ this Court had extended the benefit to taxpayers who did not have some electronic record. Therefore, we see no reason to deny the same to these Petitioners who are on a much better footing.

III. SECOND BATCH OF CASES

16. The second batch of petitions is those wherein the Petitioners aver that they made an attempt to file the TRAN-1 Form before the cut-off date, however, there is no proof/communication annexed to confirm the same.

A. Facts

17. The facts in all the petitions are similar, however for the sake of completeness, we shall only quote the necessary facts hereunder-

- i) **W.P.(C.) No. 12162/2019-** The Petitioner, despite repeated attempts and correspondences exchanged with the Respondent authorities, was unable to find a way around the technical glitches that arose on the GST Portal when attempts to upload the TRAN-1 Form were made. On 27th September, 2018, the Petitioner wrote a letter to the VATO, Ward-61 seeking assistance in filing of TRAN-1 Form. The Petitioner wrote another letter on 11th February, 2019 to the VATO,

⁹ (2020) 77 GST 550 (Delhi)

Ward-61 and again on 13th February, 2019 to Commissioner CGST, South West, Bhikaji Cama Place, New Delhi, seeking his help in filing TRAN-1 Form. In the interregnum, the Petitioner was informed by the Assistant Commissioner, CGST vide letter dated 7th March, 2019 that he was to raise his grievance before the jurisdictional State GST officer. Through another letter dated 29th March, 2019, the Commissioner, State GST was informed that despite the Petitioner being in touch with the GST Helpdesk, he could not file the TRAN-1 Form and thereafter, the grievance of the Petitioner remained unaddressed.

- ii) **W.P.(C.) No. 12686/2019-** the Petitioner had been trying to upload its claim for credit in TRAN-1 Form but could not do so due to system error of the Respondents. The Petitioner even made an attempt to upload its claim in TRAN-1 Form on 27th December, 2017 on the GST Portal, but was not able to do so, on account of failure of the system to accept the information. After the April Circular, the Petitioner wrote a letter dated 24th March, 2019 to the Assistant Commissioner, Ward-63 apprising them of the inability of the Petitioner to submit the TRAN-1 Form due to technical glitches and requested a resolution of the grievance raised. But, the Petitioner's letter went unanswered and it was constrained to approach this Court.
- iii) **W.P.(C.) No. 3793/2020-** The Input Tax Credit available with the Petitioner as on 30th June, 2017 is Rs. 11,65,281/-. The Petitioner

was unable to file the TRAN-1 Form before 27th December, 2017 owing to technical failures. Thereafter, the Petitioner addressed a communication to the GST Nodal Officer on 30th January, 2020 raising its complaint and sought the re-opening of the GST Portal.

- iv) **W.P.(C.) No. 3988/2020 and W.P.(C.) No. 3996/2020-** The Petitioners tried to file TRAN-1 Form on the GST portal on 21st, 23rd, 24th, 26th and 27th December, 2017, but could not do so because of the technical glitches on the portal which worsened due a lack of technical know-how on part of the Petitioners. Personal visits to the office of Respondent No. 3 also did not help. The phone calls made to the helpline numbers also did not have the desired effect. Eventually, the Petitioners wrote a communication to the Nodal Officer on 25th February, 2019, but did not receive a response thereto.
- v) **W.P.(C.) No. 12608/2019-** The Petitioner was entitled to a credit of Rs. 47,02,884/- on account of excise duty, and to Rs. 2,03,138/- as a result of the stock with the Petitioner. Attempt was made to upload the TRAN-1 Form but could not be completed successfully, on account of system errors such as automatic logging out. Thereafter, the Petitioner wrote a letter to the GST Authority dated 5th December, 2018 requesting an opportunity to file TRAN-1 Form. A reminder letter dated 15th January, 2019 was also written in this regard. The Petitioner's request was rejected vide letter dated 14th February, 2019 and the concerned authority stated that the claim would only be maintainable if proof was provided to support the

claim. The Petitioner in its letter dated 5th March, 2019 expressed its inability to provide any proof to back its claim that it was unsuccessful in filing the TRAN-1 Form.

- vi) **W.P.(C.) No. 1232/2020-** The Petitioner tried filing the online TRAN-1 Form several times in compliance with the requirement of Act, but he was unable to, as the online site for filing the TRAN-1 Form was not functional. Petitioner's officers immediately made several oral representations to the office of the Respondents, but their grievances were not addressed by the Respondents. The Respondents refused to even accept Petitioner's letters or representations.
- vii) **W.P.(C.) No. 3690/2020-** The Petitioner was entitled to claim credit of eligible duties amounting to Rs. 6,85,863/-. The Petitioner made multiple attempts to file the TRAN-1 Form, however, the GST Portal logged the Petitioner out of the system, every time an attempt to upload was made. The Petitioner contacted the GST Portal helpline but, each time, empty promises regarding resolution were made. As a result of the same, the Petitioner could not upload the TRAN-1 Form before 27th December, 2017. Thereafter, the Petitioner wrote a letter to the Assistant Commissioner, CGST dated 7th March, 2020 to allow the Petitioner to file TRAN-1 Form. Petitioner's final communication to authorities was a letter to the Commissioner, CGST on 8th June, 2020 seeking an opportunity to submit the TRAN-1 Form but, the same has not been acted upon.

- viii) **W.P.(C.) No. 5847/2020-** The Petitioner was unable to upload the TRAN-1 Form before 27th December, 2017 and as a result, wrote a letter to the Commissioner, CGST on 27th February, 2019 entailing its unsuccessful attempt to upload the TRAN-1 Form and seeking relief in the form of permission to submit the TRAN-1 Form. Receiving no response from the Respondent authorities, Petitioner was forced to file a complaint before the CPGRAM Portal grievance cell on 26th March, 2019 which was closed on 10th April, 2019. Thereafter, another grievance was raised before the CPGRAM Portal on 24th June, 2019 which was closed on 10th July, 2019 without redressal. Subsequently, the Petitioner sent email dated 17th May, 2020 for claim of its transitional credit. In response thereto, the Petitioner received a reply dated 25th June, 2020 stating that the case of the Petitioner has not been accepted.
- ix) **W.P.(C.) No. 3758/2020-** The Petitioner was entitled to a transitional credit of Rs. 12,19,713/-. The Petitioner was not able to furnish TRAN-1 Form on account of failure of the system to accept the information on the GST Portal before the prescribed date. That pursuant to the April Circular, the Petitioner filed a representation before the Commissioner, DGST (Jurisdictional Commissioner) on 26th March, 2019 stating that the Petitioner was not able to furnish TRAN-1 Form on account of system failures. Since no response was forthcoming, the Petitioner wrote two reminder letters dated 30th July, 2019 and 13th August, 2019 which were replied to on 20th August, 2019 whereby the State GST authorities rejected the

application of the Petitioner stating that screenshots as proof of the Petitioner's contentions had to be submitted as well. The last communication addressed by the Petitioner to the authorities was on 15th June, 2020 seeking redressal of grievances of the Petitioner related to filing of TRAN-1 Form.

- x) **W.P.(C.) No. 13680/2019-** The Petitioner was eligible for CENVAT credit to the tune of Rs. 24,54,678/- as a result of the taxes paid at the time of purchase of goods/stock. The accountant of the Petitioner attempted to file the TRAN-1 Form before the expiry of the prescribed period but was unable to do so on account of technical glitches. Pursuant to the April Circular, the Petitioner raised its grievances before the Respondents but despite receiving acknowledgement of the same, no relief was given.
- xi) **W.P.(C.) No. 1831/2020-** The Petitioner was entitled to a total credit of Rs. 2,40,79,997/- on account of Service Tax CENVAT credit of Rs. 1,62,55,758/- and Rs. 78,24,239/- on account of CENVAT credit under the reverse charge mechanism. Due to certain inadvertent clerical errors and oversight, the CENVAT credit under the reverse charge mechanism could not be claimed in the Form ST-3 return filed for the quarter ending on 30th June, 2017. Thereafter, in order to claim the entire CENVAT credit amount, the Petitioner sought to file the TRAN-1 Form before 27th December, 2017 but was unsuccessful in doing so on account of technical difficulties. The Petitioner, thereafter, approached the concerned authorities in an attempt to raise its grievance. Eventually, the

Petitioner was constrained to write a letter to the Principal Commissioner, CGST on 12th March, 2019 and received a reply thereto on 14th March, 2019 asking for details as to why the TRAN-1 Form could not be uploaded within the prescribed time period. The Petitioner, in its letter dated 19th March, 2019, explained the circumstances that prevented the filing of TRAN-1 Form before 27th December, 2017. The last communication addressed by the Petitioner was dated 22nd March, 2019 wherein the Petitioner provided details of the ticket generated on the grievance raised on the GST Grievance Redressal Portal.

B. Contention of Respondents

18. The Respondents in these set of cases have strongly refuted the claims of the Petitioners on the ground that the last date for filing the TRAN-1 Form was 27th December, 2017, and even assuming that the Petitioners' grievances were genuine, they have approached the competent statutory authorities at an exceptionally belated stage. Further, the Central Board of Indirect Taxes and Customs *vide* the April Circular, set up the ITGRC for the very purpose of dealing with the grievances of taxpayers, but all the Petitioners in this batch raised grievances much after 3rd April, 2018 which is a clear indication of the Petitioners negligence and carelessness in seeking redressal. The ITGRC duly checks the genuineness of the screenshots and verifies whether the taxpayer actually tried to file TRAN-1 Form or not. Those taxpayers who had genuine grievances were given another opportunity while those who were not able to satisfy the ITGRC

with the supportive proof were denied the same. The present Petitioners have not been able to adduce any proof to support their claims.

C. Analysis (second batch of cases)

19. Even though these Petitioners do not have any document to support their attempt in filing the TRAN-1 Form, we find that the benefit has been given by this Court to similarly placed taxpayers in other matters such as *Triveni Needles (supra)* despite the absence of any screenshots to support the claim of the Petitioners therein. The relevant paragraph reads as follows:

“9. The factual position in the present case is not any different. At this juncture, it may be noted that as per Notification No. 49/2019: MANU/CGST/0051/2019 dated 09.10.2019 issued by CBIC, the date prescribed for filing of Form GST TRAN-1 under Rule 117 (1A) of the CGST Rules has been extended to 31.12.2019. This itself demonstrates that the Respondents recognise the fact that the registered persons were not able to upload the Form GST TRAN-1 due to the glitches in the system. It is not fair to expect that each person who may not have been able to upload the Form GST TRAN-1 should have preserved some evidence of it-such as, by taking a screen shot. Many of the registered dealers/traders come from rural/semiliterate background. They may not have had the presence of mind to create any record of their having tried, and failed, to upload the Form GST TRAN-1. They cannot be made to suffer in this background, particularly, when the systems of the Respondents were not efficient. From the documents placed on record, it emanates that the Respondents have no cogent ground to deny the benefit of the Notification No. 49/2019: MANU/CGST/0051/2019 dated 09.10.2019 issued specifically to grant relief to taxpayers who faced difficulty in filing Form GST TRAN-1 due to technical glitches. Thereafter when he engaged in communication with the respondent, there was no

genuine ground forthcoming except for stating that the due date for filing of Form GST TRAN-1 was over.”

20. It is noted that W.P.(C.) No. 1831/2020 is a case wherein the Petitioner has been able to claim a certain part of the CENVAT credit that it is entitled to but, has missed out on a component of the CENVAT credit due to inadvertent clerical errors. These facts are similar to those in another judgment, to which one of us (Sanjeev Narula J.) was a party. In that case, i.e., *National Internet Exchange of India v. Union of India & Ors.*¹⁰, the Petitioner had missed out on certain invoices pertaining to inputs and input services on which service tax was paid, while filing the TRAN-1 Form. The Petitioner therein approached the competent authorities, but no action was taken and was thus, constrained to file a writ petition. This Court, while allowing the writ petition, held that-

“8. On perusal of the record, it emerges that Petitioner has filed TRAN-1 form within the time prescribed by the Respondents under the rules. Petitioner is holding documents evidencing payment of tax by it on such inputs / input services received under the erstwhile tax regime. It is thus eligible to carry forward the credit from erstwhile tax regime to the GST regime under Section 140 of the CGST Act read with Rule 117 of CGST Rules. Petitioner claims that this error has occurred because of the introduction of new and vastly different tax regime (GST) of which the Petitioner had no prior experience whatsoever, and thus it was new to the filing of Form GST TRAN-1 as well. For the aforesaid bona fide human error, inadvertently, it failed to take into account certain invoices, on which service tax amounting to Rs. 40,36,542/- was not reflected in TRAN-1 Form.”

¹⁰ MANU/DE/0242/2021

Since the Petitioner in W.P.(C.) No. 1831/2020 is in a similar quandary, there is no reason to deny it the benefit of the above cited order.

21. In view of the above, there is no reason why a similar relief should not be granted in the present set of petitions. Accordingly, the aforesaid petitions are allowed.

IV. THIRD BATCH OF CASES

22. This set of cases is slightly different. In this group, the Petitioners have all submitted the TRAN-1 Form within the prescribed time period but their grievance stems from their inability to revise/rectify the TRAN-1 Form filed by them.

A. Facts

23. The facts in all the petitions are similar, and thus for the sake of completeness, only the necessary facts are being highlighted for the present purpose:

- i) **W.P.(C.) No. 8583/2020-** Petitioner submitted TRAN-1 Form claiming unutilized credit on VAT as well as CENVAT, but subsequently it was noticed that the electronic credit register reflected only a sum of Rs. 4,17,042/- on account of unutilized credit of VAT and not the unutilized CENVAT credit to excise duty amounting to Rs. 14,50,716/-. Petitioner submits that due to a technical glitch, the amount of transitional unutilized CENVAT credit of Rs. 14,50,716/- is not reflected in the electronic cash ledger, although the claim of input tax credit of VAT of Rs.

4,17,042/- is reflected in electronic credit ledger. After noticing the above discrepancy, the management of the Petitioner firm made efforts to rectify the TRAN-1 Form already submitted by the Petitioner and also wrote a letter to the Assistant Commissioner of Central Taxes on 25th February, 2020 pointing out the above mistake and requesting them to allow the transitional credit. However, no action has been taken by the Jurisdictional Officer to rectify the mistake and/or permit the Petitioner to submit the revised/rectified TRAN- 1 Form so that the amount of CENVAT transitional credit to which the Petitioner is entitled to is reflected in the electronic credit ledger.

- ii) **W.P.(C.) No. 7111/2020-** As per its Service Tax return filed on 25th September, 2017 for the period April, 2017 to June, 2017, the Petitioner was eligible to carry forward CENVAT credit amounting to Rs. 4,56,30,842. The Petitioner however, due to lack of knowledge about the newly introduced statute, while filing the TRAN-1 Form for transfer of credit of pre-GST regime into the GST regime, mistakenly filled in 'Nil' under CENVAT credit admissible as input tax credit under Table 5 of the TRAN-1 Form. As a result, the service tax credit, that is the input tax credit of the pre-GST regime, could not be transferred to the credit ledger of the Petitioner even though TRAN-1 Form was filed. The Petitioner was constrained to approach the Superintendent, GST by a letter dated 22nd March, 2019 praying for the opportunity to revise the TRAN-1 Form so that the Petitioner could avail the benefit of input tax

credit. Reminder letters were also sent on 17th September, 2019 and 13th August, 2020 but, to no avail.

- iii) **W.P.(C.) No. 221/2020**- While filing the TRAN-1 Form on 31st October, 2017, the Petitioner inadvertently missed out on mentioning the CENVAT credit amounting to Rs. 39,11,565/-. The Petitioner wrote a detailed letter dated 16th January, 2019 to the Commissioner, CGST, intimating them about the omitted transitional credit and made a request to them to open the GST Portal, so that the petitioner could revise the TRAN-1 Form. Reminder letters dated 14th August, 2019 and 16th September, 2019 were also addressed to the Commissioner, CGST but, no response was received thereto. The Petitioner, in its final attempt to revise the TRAN-1 Form, addressed a representation dated 10th December, 2019 to various Respondent authorities, being the GST Council, GST Network, Revenue Secretary and Chairman, Central Board of Indirect Taxes and Customs, but to no avail.
- iv) **W.P.(C.) No. 3658/2020**- On account of certain inadvertent errors, the Petitioner, in its TRAN-1 Form uploaded on 26th December, 2017, filed a total claim of Rs. 1,62,74,543/- instead of Rs. 1,79,85,755/-. Petitioner claims that it was only towards the end of 2019-2020, during the course of an audit that the mistake was noticed. Eventually, the Petitioner made a representation to the Joint Commissioner, CGST, ITGRC seeking relief to revise the TRAN-1 Form filed, so that the correct details may be filled in and the

Petitioner may be able to take benefit of the accrued credit, with no success.

B. Contention of Respondents

24. In the present set of cases, the Respondents have chosen not to file counter-affidavits despite repeated opportunities. But, in similar cases like the present set, the concerns raised by the Respondents are to the effect that as there is a manifest and admitted error on the part of the taxpayers while filing the TRAN-1 Form, and further, opportunity is sought to revise the same beyond the statutorily prescribed time period. The relief should not be granted as the same would be against the interest of the Revenue.

C. Analysis (third batch of cases)

25. In the aforesaid petitions, the taxpayers have filed the TRAN-1 Form within time, however on account of an inadvertent mistake on their part, incorrect details have been submitted via the TRAN-1 Form, and thus, they seek revision/rectification of their TRAN-1 Form.

26. It is seen that since there is no effective mechanism provided for the revision/rectification of TRAN-1 Form, the Petitioners were forced to approach this Court under Article 226 of the Constitution. There is no dispute as to the fact that the Petitioners filed the TRAN-1 Form within the prescribed time, however, they were precluded from claiming their transitional credit on account of inadvertent error on their part due to filling in of wrong details or omissions. In the opinion of this Court, a genuine mistake should not result in the Petitioners' losing out on their

accumulated credit which is protected by Article 300A of the Constitution. The lack of an effective revisional mechanism would leave the taxpayers remediless, which, to our minds, could not be the intention of the law, and moreover, no provision was brought to our notice which extinguishes the said right of the taxpayer. For such reasons, the present set of cases are also allowed.

27. It is noted that similar relief has been granted by this Court in several decisions including *Blue Bird Pure Pvt. Ltd. v. Union of India and Ors.*,¹¹ *Aadinath Industries and Ors. v. Union of India*,¹² and *Aagman Services Private Limited v. Union of India and Ors.*¹³ In the decision in *Blue Bird (supra)*, this Court held as under:

“12. In the present case, the Court is satisfied that, although the failure was on the part of the Petitioner to fill up the data concerning its stock in Column 7(d) of Form TRAN-1 instead of Column 7(a), the error was inadvertent. The Respondents ought to have provided in the system itself a facility for rectification of such errors which are clearly bona fide. It should be noted at this stage that although the system provided for revision of a return, the deadline for making the revision coincided with the last date for filing the return i.e. 27th December, 2017. Thus, such facility was rendered impractical and meaningless.”

V. CONCLUSION AND DIRECTIONS

28. All the petitions in the first, second and third batch are allowed, and all

¹¹ 2019[29] G.S.T.L. 660, Pending SLP (*Union of India & Ors. v. M/s Blue Bird Pure Pvt. Ltd.*, SLP(C.) No. 4916/2020)

¹² 2019[30] G.S.T.L. 478

¹³ (2020) 77 GST 530 (Delhi) SLP Dismissed, (*Nodal Officer Delhi State GST Department v. Aagman Services Private Limited & Ors.*, Diary No. 22386/2020)

the pending applications also stand disposed of.

29. Respondents are directed to either re-open the online portal so as to enable the Petitioners to file TRAN-1 Form electronically, or to accept the same manually on or before 30th June, 2021. The Respondents shall process the Petitioners' claims in accordance with law once the TRAN-1 Form is filed.

MAY 27, 2021

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SANJEEV NARULA, J

MANMOHAN, J

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