

CASE DETAILS

Main Number		WP 9166/2020	SR Number		WPSR 12405/2020		
Petitioner		M/s. BMW India Financial Services Pvt. Ltd.	Respondent		The Union of India and 5 Others		
Petitioner Advocate		KEERTHI KIRAN KOTA	Respondent Advocate		NAMAVARAPU RAJESHWAR RAO(ASSGI)		
Case Category		NON-SERVICE	District		HYDERABAD		
Filing Date		23/06/2020	Registration Date		24/06/2020		
Listing Date		18/08/2021	Case Status		DISPOSED Click here to see the Order		
Disposal Date		18-08-2021	Disposal Type		ALLOWED NO COSTS		
Purpose		FOR PRONOUNCEMENT OF JUDGMENT	Scrutiny Officer name		GGD		
Hon'ble Judges		The Honourable Sri Justice M.S.RAMACHANDRA RAO,The Honourable Sri Justice T.VINOD KUMAR					
Category							
Category		WP	Sub Category		COMMERCIAL TAXES		
Sub Sub Category		-					
IA DETAILS							
IA Number	Filing Date	Advocate Name	Misc.Paper Type	Status	Prayer	Order Date	Order
IA 1/2020	24/09/2020	KEERTHI KIRAN KOTA	Direction Petition	Disposed	IA PRAYER	18/08/2021	
USR Details							
USR Number	Advocate Name		USR Type	USR Filing Date	Remarks		
1/2021	NAMAVARAPU RAJESHWAR RAO(ASSGI)		Memo of Appearance	18/02/2021	R 1 5 AND 6		
WPUSR 9816/2021	NAMAVARAPU RAJESHWAR RAO(ASSGI)		Counter Affidavit	17/02/2021	ACCEPTED		
WPUSR 21991/2020	KEERTHI KIRAN KOTA		Additional Material Paper	25/06/2020	PENDING FOR SCRUTINY		
WPUSR 40863/2020	KEERTHI KIRAN KOTA		Additional Material Paper	28/11/2020	PENDING FOR SCRUTINY		
WPUSR 9803/2021	NAMAVARAPU RAJESHWAR RAO(ASSGI)		Memo of Appearance	17/02/2021	PENDING FOR SCRUTINY		
CONNECTED MATTERS							
Connected Case Number							
YAKALATH							
Advocate Code		Advocate Name	P/R No.	Remarks			
LOWER COURT DETAILS							
PRAYER							
to issue a Writ of Mandamus or a Writ in the nature of mandamus or any other appropriate writ to the Respondents directing the Respondents to take such actions as may be necessary for transitioning the credit of Rs 21 07 574/ as filed by the Petitioner in FORM GST TRAN 1 on 27/12/2017 into the Petitioners electronic credit ledger in FORM GST PMT2 including by way of permitting the Petitioner to resubmit Form GST TRAN1 electronically or manually or in the alternative by permitting the Petitioner to avail the credit of Rs Rs 21 07 574/ in FORM GSTR 3B and accept the same and pass							
PETITIONER(S)							
S.No	Petitioner(S) Name						
1	M/s BMW India Financial Services Pvt Ltd A company incorporated under the companies act 1956 Having its registered office previously at DLF Cyber City Phase II Building No 10 Tower C 14th Floor Gurugram 122002 Haryana State Represented by its Director Mr Karsten Peter Stumpf Presently at The Oberoi Corporate Tower Building No 11 1st Floor DLF Cyber City Phase II Gurugram 122002 Haryana State						
RESPONDENT(S)							
R.No	Respondent(S) Name						
1	The Union of India and 5 Others Represented by its Secretary Ministry of Finance Department of Revenue North Block New Delhi 110001						
2	The State of Telangana Represented by its Commissioner Commercial Taxes Department						
3	The Assistant Commissioner of Commercial Tax Khairatabad Circle Punjagutta division Hyderabad						
4	The GST Telangana Commissionerate Raja Reddy Marg Gun Foundry Basheer Bagh Hyderabad Telangana 500001						
5	The Goods and Services Tax Network GSTN East Wing 4th Floor World Mark I Aerocity New Delhi 110037						
6	The Goods and Services Tax Council GST Council Rep by its Secretary 5th Floor Tower II Jeevan Bharti Building Janpath Road Connaught Place New Delhi 110001						
CASE HISTORY							
List Date	Judge Name		Business				
ORDERS							
Order on	Judge Name			Date of Order	Order Type	Order Details	
WP 9166/2020	The Honourable Sri Justice M.S.RAMACHANDRA RAO,The Honourable Sri Justice T.JAMARNATH GOUD			2020-05-29	Spl Cell Orders		

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION No.9166 of 2020

ORDER: *(per Hon'ble Sri Justice T.Vinod Kumar)*

In this writ petition, the petitioner is challenging the action of the respondents, in non-transitioning the credit of value added tax paid into petitioner's electronic credit ledger in Form GST PMT-2, on the basis of declaration in Form GST TRAN-1 filed on 27.12.2017 through GST Portal; not allowing the petitioner to avail the credit of the amount in Form GSTR-3B; and utilize the same in discharge of its tax liability under the Central Goods And Service Tax Act, 2017 (for short 'CGST Act') and Telangana State Goods and Service Tax Act, 2017 (for short 'SGST Act').

2. The petitioner contends that, it is into the business of non-banking financial company engaged in financing automobiles in the form of loans and financial leases to its customer and has operations in 14 States across India, including in the State of Telangana. For the purposes of carrying on business in the State of Telangana, the petitioner obtained registration under the provisions of the Telangana State Value Added Tax Act, 2005 (for short, 'the TVAT Act'), as well as under the provisions of the Finance Act, 1994, for the purpose of service tax payable on leasing activity.

3. It is the contention of the petitioner that upon introduction of Goods and Service Tax Act, 2017 (for short 'GST Act'), w.e.f. 01.07.2017, the petitioner got itself registered under the CGST Act and SGST Act, in the State of Telangana and has been filing returns and paying applicable

GST both under CGST and SGST on its transactions without any adverse remarks.

4. It is the further contention of the petitioner that with the introduction of GST, with effect from 01.07.2017, and in terms of provisions of Section 142(11)(c) of the CGST Act read with Section 142(10)(c) of the TGST Act, the petitioner became entitled to take credit of Value Added Tax or Service Tax paid under the existing law, *namely*, the TVAT Act, or the Finance Act, 1994, proportionate to the extent of supplies made after the appointed day and such credit is to be calculated in the manner to be prescribed.

5. It is also contended that as per Rule 118 of the Central Goods and Services Tax Rules, 2017 (for short, 'the CGST Rules') read with Rule 118 of the Telangana Goods and Services Tax Rules, 2017 (for short, 'the SGST Rules') every person to whom Section 142(11) of CGST Act, applies, shall within the period specified in Rule 117 of the CGST Act or such further period as extended by the Commissioner, is required to submit a declaration electronically in Form GST TRAN-1 furnishing the proportion of supply on which the Value Added Tax or Service Tax has been paid before the appointed day, but the supply is to be made after the appointed day and the input tax credit admissible thereon.

6. It is the claim of the Petitioner, that it had paid the service tax on 10% interest portion of leasing contracts under the provisions of Finance Act, 1994, which were entered into before the introduction of GST Act, 2017. Similarly, it is also claimed that 100% of VAT on the entire value of lease rentals receivable, is paid upfront in the first month of entering into contract itself under the relevant provisions of the TVAT Act, even though

the tenure/ term of lease / rental contracts is spread over a period of time.

7. Thus, the petitioner claims that with the introduction of CGST and SGST Act, 2017, having regard to the provisions of the CGST Act and the SGST Act and the Rules made thereunder, the petitioner became entitled to avail the transitional VAT credit in a sum of Rs.21,07,574/-, in respect of lease / rental contracts / agreements, where the tenure / term is continuing post introduction GST w.e.f. 01.07.2017, as the petitioner is now required to discharge liability under the GST Act, 2017.

8. The petitioner contends that it had, in terms of the provisions of the CGST Act and the SGST Act read with the Rules made thereunder, declared an amount of Rs. 21,07,574/- as transitional credit in Form GST TRAN-1, by uploading the same electronically on GST portal through GSTN Network, as mandated under the Act and the Rules, on 27.12.2017, being the last date notified under Rule 117 of CGST Rules.

9. It is the contention of the petitioner that though it had encountered certain technical difficulties/glitches on the GSTN portal, even while uploading the above information, however, by making efforts, the petitioner could upload the information in Form GST TRAN-1 on 27.12.2017 at 11.13 AM; that upon uploading the Form GST TRAN-1 electronically, the petitioner received acknowledgment of successful filing of the said form electronically and received an Application Reference Number ('ARN') AA361117203771H; and that in addition to receiving the ARN number, the petitioner also received the confirmation mail from an email ID of the respondents "donotreply@gst.gov.in" confirming the

successful filing of the transition form by the petitioner and the ARN number provided to the petitioner for the above said filing made.

10. Petitioner contends that despite the petitioner successfully uploading the information and submission of Form GST TRAN-1 for transition of credit of Rs.21,07,574/-, as claimed in column 11 of the said form, the same was not reflected in the online electronic credit ledger of the petitioner maintained by the respondents. The petitioner would thus, contend that non-reflection of the transitional credit in the online electronic credit ledger of the petitioner, despite the petitioner having filed the same in time as prescribed in Rule 117 of the CGST and the SGST Rules, is due to the technical glitches that have been encountered in the GSTN network and was not due to any fault on the part of the petitioner.

11. As a result of the transitional credit not getting reflected in the electronic credit ledger of the petitioner maintained in Form GST PMT-2 on the common portal of the respondents, which is showing credit as 'NIL', the petitioner is unable to utilize the accrued credits for discharge of its liability under both the CGST as well as the SGST Act causing financial hardship.

12. The petitioner would further contend that on noticing that the credit was not being reflected in the electronic ledger on the common portal, the petitioner immediately raised a query on this aspect of technical error on the part of GSTN on 02.01.2018 and also followed it up by addressing a letter to the CEO of the GSTN, New Delhi, on 19.03.2018, requesting them to look into the issue and provide a solution for getting the credit transitioned. The petitioner would further contend that the petitioner also addressed letters subsequent thereto, to all the concerned,

including meeting the concerned authorities of GST in the Telangana Commissionerate at Hyderabad as well as the GST authorities of the State.

13. Despite the petitioner making its best efforts, in explaining to the authorities concerned about the petitioner uploading the Form GST TRAN-1 on 27.01.2017 successfully seeking transitional credit of Rs.21,07,574/-, there was no response, nor the grievance of the petitioner was resolved. As the petitioner was not getting any response, nor the issue getting resolved, whereby the credit is reflected in electronic ledger of the petitioner on common portal, the petitioner addressed an email on 18.03.2019, wherein it has brought to the notice of the GST authorities, that when a similar issue arose in respect of petitioner's branches at Delhi and Haryana, the concerned authorities in the respective States, reopened the portal for filing of TRAN-1 and sought for similar resolution even in the State of Telangana, as the last date for making corrections in Form GST TRAN-1 was notified as 31.03.2019. However, it is claimed that the said request of the petitioner did not elicit any response from the 4th respondent.

14. As no response was forthcoming from the respondents, nor the transitional credit claimed is getting reflected in its electronic ledger, the petitioner once again on 13.05.2020, addressed a letter to the GST Telangana Commissionerate and requested the said authority to consider the issue and refer the matter to the 2nd respondent for redressal. An e-mail dt. 15.05.2020 was sent to the 2nd respondent, requesting for resolving the issue of transitional credit at the earliest, so that the petitioner company can overcome the issue of outflow of cash flow during Covid-19 period.

15. Upon the petitioner addressing the letter dt. 13.05.2020 and e-mail dt.15.05.2020, the petitioner received an email communication dt.05.06.2020 from the Assistant Commissioner of the State GST i.e., 3rd respondent, informing the petitioner that the case of the petitioner was sent to ITGRC through GSTN, but the same was not considered for reopening for filing Form GST TRAN-1, *"as no technical issues were noticed in their log."*

16. The petitioner contends that the said e-mail communication is wholly improper, a non-speaking and arbitrary, for the reason that it did not consider the evidence submitted by the petitioner by its earlier communication and that no opportunity of hearing was accorded to the petitioner before deciding to reject the petitioner's plea to look into the issue of technical glitches on the GSTN.

17. The petitioner contends that the claim for transitional credit as filed on 27.02.2017 cannot be denied by the respondents by observing that "no technical issues were noticed in their log", since, it is common knowledge that the GSTN network through which implementation of GST and transition from the existing regime of VAT/Central Excise/Service Tax was undertaken, had faced technical glitches. The fact of the GST portal having technical glitches has also been taken note by the Central Board of Indirect Taxes and Customs, which had issued Circular bearing No.39/13/2018-GST dt.03.04.2018 on the issue of addressal of grievances of taxpayers due to technical glitches on the GST portal, wherein in para 8.1, it has been stated that, *"A large number of taxpayers could not complete the process of TRAN-1 filing either at the stage of original or revised filing as they could not digitally authenticate the TRAN-1s due to IT related glitches."*

18. The petitioner would further contend that when a similar issue arose in petitioner's own case in the State of Maharashtra, the petitioner approached the Hon'ble High Court of Bombay by way of a writ petition, being WP-LD-VC-85 of 2020, and the Hon'ble High Court was pleased to allow the writ petition and directed the respondents to allow the transitioning of credit of the amount into petitioner's electronic credit ledger within a period of four weeks from the date of the said order. The Petitioner seeks for grant of similar relief even in the present writ petition.

19. Opposing the relief sought for by the petitioner, a voluminous counter-affidavit is filed on behalf of respondents 1 and 6.

20. The respondents, by the counter-affidavit filed, have contended that there are absolutely no merits in the writ petition and that though the transitional provision permitting to carry forward of CENVAT credit of eligible duties, no legitimate right can be claimed for allowing such credit.

21. No counter-affidavit has been filed on behalf of respondents 2 to 5.

22. Heard Sri Keerthi Karan Kota, learned counsel for the petitioner; Sri Namavarapu Rajeshwar Rao, learned Assistant Solicitor General, appearing for the respondents.

23. Firstly, it is to be noted that though a counter-affidavit, which is no short of an exposition on GST law is filed by respondents 1 and 6, the same does not answer the specific grievance of the petitioner anywhere. Secondly, by the counter-affidavit, the respondents in one breathe claim that the network has been working seamlessly and without failure, as a result of which, large number of people have filed Form GST TRAN-1 returns correctly within the prescribed time and it is only handful of

persons, like the petitioner, who did not do so. However, by the same counter affidavit, the respondents on the other hand state that as large taxpayers have faced IT glitches on GSTN network, on the recommendation of GST Council in its 26th meeting held on 10.03.2018, an IT Grievance Redressal Mechanism (ITGRM) was put in place, *vide* CBIC Circular No.39/13/2018-GST dt.03.04.2018, wherein cases pertaining to non-filing of Form GST TRAN-1 due to IT glitches was sought to be addressed and also the period for submitting declarations electronically was extended. The said stand of the respondents is self-contradictory, to say the least.

24. Further, judicial notice can be taken of the fact that transition to GST with effect from 01.07.2017 was not a smooth affair and in fact had resulted in a chaotic situation across the country, due to failure of GSTN network. Having regard to the said fact, various High Courts, have allowed the writ petitions filed by the affected parties before the respective High Courts and directed the respondents to accept the Form GST TRAN-1 manually. If the assertion of respondents that there were no technical glitches in the GSTN network and the transition to GSTN was smooth, is to be accepted, there was no necessity either for the GST Council to recommend for a redressal mechanism at its 26th council meeting or for the CBIC to extend time for filing Form GST TRAN-1 from time to time till 27.012.2017. Thus, the claim of the respondents that there were no technical glitches in GSTN network and it is only a handful of people, like the petitioner, who could not file the transition claim form electronically, are seeking to make such allegation, is without any substance or basis and lacks bonafides, as the said claim is contrary to the

actual situation that prevailed at the relevant time, apart from being a self serving statement.

25. Further, the claim of the respondents that the Government cannot be held responsible for negligence and dereliction of duty by a responsible taxpayer and if the contention of the petitioner were to be accepted by providing facility of filing/revision of Form GST TRAN-1, it would jeopardize the Government revenue on account of similar demands from other taxpayers who could not file/revise in time due to negligence and it would be difficult for the Government to verify *bona fides* of such claim, is also without any merit for the reason that the factum of petitioner filing the declaration in Form GST TRAN-1 on 27.12.2017 at 11.13 AM is not in dispute. It is also to be seen that upon such filing of TRAN-1 form, the petitioner is in receipt of ARN number generated from the respondents system and also an email acknowledging the said submission of form electronically, from the respondents e-mail id. Thus, it would be wholly inappropriate to allege negligence on the part of the taxpayer, like the petitioner, who despite the Network put in place by the respondents having technical glitches, by spending substantial time had uploaded the Form GST TRAN-1 before the due date, i.e. by 27.12.2017.

26. The respondents, being fully aware of the situation that prevailed with regard to the working of the network, instead of being sensitive to the issue, and taking steps proactively to resolve the grievance of the petitioner, chose to make allegation of negligence on the part of the petitioner without any basis. If only the petitioner acted in a negligent manner, the petitioner would not have uploaded the form on 27.12.2017 at 11.13 AM from its system by logging into the GSTN network maintained by the respondents. The petitioner can have control only on its system

and but not on the working of the GSTN network. Once, the petitioner has uploaded the required information by submitting the Form GST TRAN-1 electronically on the portal by using its system, the duty cast on a responsible taxpayer gets complete and it is for the authorities to ensure that their systems capture the information fed in by the taxpayer correctly, and no hardship is caused to the taxpayer.

27. In the facts of the present case, even though the petitioner is in receipt of an acknowledgment number and also an email confirming successful submission of the Form GST TRAN-1 electronically, the information furnished thereunder is not transitioned into online electronic credit ledger of the petitioner maintained on the portal, which admittedly is in the control of the respondents. The respondents instead of taking steps to set-right their house in order, are alleging negligence on the part of the petitioner. The said action of the respondents is a highly reprehensible and only goes to show the high-handed attitude and approach of the respondents in dealing with the taxpayers, forgetting the fact that no tax can be collected without authority of law, which implies that the respondents grant the benefit / concession to which a tax payer is entitled to otherwise. By denying the transitional credit as in the present case, the respondents are compelling the tax payer like petitioner to pay tax in full without availing the benefit of adjustment / debit from its credit ledger.

28. It is also to be seen that though the respondents filed a lengthy counter-affidavit, it neither denied or disputed the ARN number generated from their systems and the email received by the petitioner of successful filing of GST TRAN-1 Form. In the absence of any denial to the ARN number or email sent to the petitioner, it is not open for the respondents

now to turn around and allege the petitioner to be a non-filer. Further, no explanation is offered by the respondents as to which transaction the ARN number referred to by the petitioner is relatable to, if under the said ARN number, the petitioner has not filed Form GST TRAN-1 on 27.12.2017.

29. Since, the counter-affidavit does not deal with the said specific contention of the petitioner, it is to be construed that the respondents do not dispute the fact of petitioner filing form GST TRAN-1 electronically on 27.12.2017 claiming a transitional credit of Rs.21,07,574/-. As the factum of the petitioner filing the form GST TRAN-1 within the time prescribed stands confirmed, the natural corollary is that the amount claimed as transitional credit available to it, has to be reflected automatically in the online electronic credit ledger. The entitlement of the petitioner to the said credit is another aspect, which needs to be gone into by the concerned authority by examining the claim by calling for such information from the petitioner after putting the petitioner on notice, but the same cannot be denied to be transitioned at the initial stage itself.

30. In an identical situation, in petitioner's own case, the Bombay High Court in WP-LD-VC-85 of 2020 considering a similar issue of transitional credit of Rs.17,07,673/- claimed through TRAN-1 filed on 27.12.2017 not being transitioned into the petitioner's electronic credit ledger despite successful filing, by its judgement dt.29.10.2020 while observing that the action of the respondents is unfair and unjust, held as under:

"18. At the outset, we must say that it is not disputed that Petitioner's Form GST TRAN-1 filing on 27th December, 2017 was successful. The only issue is that the credit of Rs.17,07,673/- has not been transitioned in the Petitioner's electronic credit ledger despite the successful filing. It is not also in dispute that after filing TRAN-1, which filing was successful, the credit of Rs.17,07,673/- is not appearing in the Petitioner's electronic credit ledger/register and

despite making grievance to the authorities, as discussed earlier, Petitioner did not receive any positive response. We are unable to comprehend that even though, admittedly, the filing was successful, the credit is not being reflected in the Petitioner's ledger and merely on the ground that no technical error has been found on the GSTN, the grievance of the Petitioner has not been addressed.

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21. In this case, we are not examining the issue, whether the Petitioner is entitled to VAT tax credit as claimed by the Petitioner which will be examined by the authorities. What we are concerned with is that despite the admitted successful filing of Form TRAN-1 by the Petitioner on 27th December, 2017, the request of the Petitioner for transitioning of credit has not been approved by the ITGRC merely on the basis that there were no technical glitches on the GSTN side. There is no further explanation or clarification or evidence on the issue by the Respondents. Even the learned Sr. Counsel for the Respondents has only reiterated this stand during his submission.

22. The whole objective of digitalization is to convenience the tax payers and not to harass them. We are conscious that the GST system is still evolving in its implementation. We are of the view that merely because there were no technical glitches in the GSTN with respect to the Petitioner's TRAN-1 which was admittedly filed in time, the claim of the Petitioner, if it was otherwise eligible in law, cannot be rejected for no apparent fault on the part of the Petitioner. This cannot be the objective of the GST system or digitization. Such a situation cannot be countenanced as it would be wholly unfair and unjust.

23. We are, therefore, of the view that this is a fit case for invocation of our writ jurisdiction."

31. By holding as above, the Bombay High Court allowed the writ petition and directed the respondents to take such action as may be necessary for transitioning the credit of such amount into petitioner's credit ledger/electronic credit ledger within four weeks from the date of the order.

32. In the facts of the present case, we see no reason to take a different view from the one as expressed by the Bombay High Court, merely because the respondents chose to file a counter in the present writ petition alleging negligence on the part of the petitioner, which in our concerned view, as detailed herein above is without any basis, unsubstantiated apart from being reprehensible.

33. Further, as the various activities under GST are technology driven, and given the fact that there exists no seamless connectivity between a tax payer and the respondent network, and a tax payer is required to go through various intermediate service provides, more so in the initial stage of implementation by migrating from existing system of indirect taxation, it would be highly improbable to expect the transition to be smooth and without glitches as being claimed by the respondents.

34. For the reasons indicated above and also for the reason that we are in concurrence with the views expressed by the Bombay High Court on the same issue, in the petitioner's own case, the petitioner is liable to succeed even in the present writ petition.

35. Accordingly, the writ petition is allowed. The respondents are directed to transition the credit of amount of Rs. 21,07,574/- claimed by the petitioner, into petitioner's electronic credit ledger in Form GST PMT-2 maintained on the portal, within a period of four weeks from the date of the order.

36. However, it is made clear that we have not examined the merits of the claim of the petitioner with regard to the eligibility or otherwise of the said amount claimed as VAT credit available on the notified date.

37. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T.VINOD KUMAR

Date:18.08.2021

GJ

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION No.9166 of 2020
*(Order of the Division Bench delivered by
the Hon'ble Sri Justice T.Vinod Kumar)*

Dt: 08.2021

GJ