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THE

GOODS AND SERVICE TAX REPORTS

VOLUME 79 — 2020

[2020] 79 GSTR 1 (Delhi)

[IN THE DELHI HIGH COURT]

UNINAV DEVELOPERS PVT. LTD.

v.

UNION OF INDIA AND OTHERS

DR. S. MURALIDHAR and TALWANT SINGH JJ.

July 29, 2019.

HF ▸ Assessee

GOODS AND SERVICES TAX—INPUT-TAX CREDIT—TRANSITIONAL PROVISIONS—INABILITY TO FILE FORM TRAN-1—WRIT—HIGH COURT—DIRECTION TO DEPARTMENT TO EITHER OPEN PORTAL TO ENABLE ASSESSEE TO FILE FORM TRAN-1 ELECTRONICALLY OR ACCEPT MANUALLY FILED FORM AND PROCESS ASSESSEE'S CLAIMS THEREAFTER IN ACCORDANCE WITH LAW.

On a writ petition by the assessee contending that it was unable to claim Cenvat credit of Rs. 36,28,099 in form TRAN–1 because the assessee was unable to connect to the portal to submit the return in the first place :

Held, *that the assessee was right in contending that in its case, if it was not able to even connect with the server, the fact of a failed attempt at filing a return might not even be registered on the system. The assessee's eligibility to claim Cenvat credit in the sum of Rs. 36,28,099 had not been disputed by the Department.*

[*The court directed the respondents to either open the portal to enable the assessee to again file form TRAN-1 electronically, failing which they were to accept the manually typed form TRAN-1 on or before August 31, 2019 and process the assessee's claim in accordance with law.*]

Cases referred to :

Bhargava Motors *v.* Union of India [2019] 66 GSTR 114 (Delhi) (para 6)

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Kusum Enterprises Pvt. Ltd. *v.* Union of India [2019] 68 GSTR 338 (Delhi) (para 6)

Sanko Gosei Technology India Pvt. Ltd. *v.* Union of India [2019] 68 GSTR 338 (Delhi) (para 6)

W. P. (C) No. 13772 of 2018.

Vineet Bhatia and *Puneet Rai* for the petitioner.

Jasmeet Singh, Central Government Standing Counsel, with *Srivats Kaushal* for the Union of India.

Amit Bansal and *Aman Rewaria* for respondent No. 3.

Shadan Farasat,, Assessee, GNCTD with *Ms. Hafsa Khan* for respondent No. 4.

ORDER

C.M. Appl. No. 53809/2018 (Exemption) :

1 Allowed, subject to all just exceptions.

W. P. (C) No. 13772/2018 :

2 This is one other case, where on account of technical glitches, a registered dealer is unable to claim Cenvat credit which works out to Rs. 36,28,099 in Form TRAN–1.

3 The respondents have in their counter-affidavit stated that by circular dated April 3, 2018 issued by the Central Board of Indirect Taxes and Customs (CBIC), an IT Grievance Redressal Committee (ITGRC) had been formed to address the grievance of taxpayers due to the technical glitches of GST Portal. It is stated that the petitioner's case was placed before the ITGRC on February 12, 2019. The ITGRC concluded that the present case falls under the category of B2, i.e., "Cases in which TRAN-1 filing attempted for the first time or revision was attempted but no error/no valid error reported". Mr. Amit Bansal, learned counsel appearing for the respondents points out that in several of the cases, where there was evidence of a failure of a system, re-filing was permitted but in as many as 127 cases, in the absence of such evidence, re-filing was not allowed.

4 Learned counsel for the petitioner points out that in the present case, the eligibility of the petitioner to claim the Cenvat credit has not been doubted by the respondents. He points out that this was a service tax refund which was appearing in the petitioner's returns even for the earlier period, i. e., prior to the coming into force of the new GST regime with effect from July 1, 2017. All that had to be done was to carry forward the said Cenvat credit under the new GST regime. However, for no fault of the petitioner, despite repeated attempts, it could not file the form GST TRAN–1

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claiming the tax credit. Learned counsel for the petitioner points out that respondents will get a report of technical error, only if the person trying to upload TRAN-1 comes in contact with the system, whereas in the present case, the petitioner was unable to connect to the portal to submit the return in the first place. The portal reflected the message : "error occurred in submit".

As pointed out in earlier orders of this court, there appear to be technical errors or technical glitches of various kinds in the GST system, which is still in the "trial and error" phase. There is merit in the contention of the petitioner that in its case, if it was not able to even connect with the server, then at the end of the respondents, the fact of a failed attempt at filing a return may not even be registered on the system. Added to this is the fact that the petitioner's eligibility to claim Cenvat credit in the sum of Rs. 36,28,099 has not been disputed by the respondents in their reply. **5**

As observed by this court in several orders, i. e., in *Bhargava Motors* v. *Union of India* [2019] 66 GSTR 114 (Delhi) ; [2019] SCC OnLine Del 8474, *Kusum Enterprises Pvt. Ltd.* v. *Union of India* [2019] 68 GSTR 338 (Delhi) (W. P. (C) No. 7423/2019) and *Sanko Gosei Technology India Pvt. Ltd.* v. *Union of India* [2019] 68 GSTR 338 (Delhi) (W. P. (C) No. 7335/2019), the entire GST system is still in a trial and error phase and it will be too much of a burden to place on the assessees to expect them to comply with the requirement of the law where they are unable to even connect with the system on account of network failures or other failures. **6**

The court would urge the ITGRC to review the policy it has adopted in such cases, and acknowledge instances like the present one, where the petitioners are not able to link with the portal and therefore, the fact of a technical glitch is not able to be accounted for in the system. **7**

The court therefore, directs that the respondents to either open the portal to enable the petitioner to again file the TRAN-1 Form electronically, failing which they will accept the manually typed TRAN-1 Form on or before August 31, 2019. The petitioner's claim shall thereafter be processed in accordance with law. **8**

The writ petition is disposed of in the above terms. **9**

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[2020] 79 GSTR 4 (Delhi)

[IN THE DELHI HIGH COURT]

VERTIV ENERGY PRIVATE LIMITED

v.

UNION OF INDIA AND OTHERS

DR. S. MURALIDHAR and **TALWANT SINGH** JJ.

August 1, 2019.

HF ▸ Assessee

GOODS AND SERVICES TAX—INPUT-TAX CREDIT—TRANSITIONAL PROVISIONS—INABILITY TO FILE FORM TRAN-1—WRIT—HIGH COURT—DIRECTION TO DEPARTMENT TO EITHER OPEN PORTAL TO ENABLE ASSESSEE TO FILE FORM TRAN-1 ELECTRONICALLY OR ACCEPT MANUALLY FILED FORM AND PROCESS ASSESSEE'S CLAIMS THEREAFTER IN ACCORDANCE WITH LAW.

For the period ending on June 30, 2017 the assessee had an input-tax credit of eligible duty of Rs. 1,00,67,087. After filing form TRAN-1 on December 27, 2017 online, the petitioner noticed that the electronic account ledger did not reflect the entire amount of Rs. 1,00,67,087 and instead only reflected credit of Rs. 6,54,978. The assessee contacted the goods and services tax help desk, but did not receive concrete answers, and believing that this was a mere system error which would be corrected in due course of time, waited for around two months. Thereafter, the assessee mailed written submissions to the help desk on March 8, 2018, followed by online complaints to the self grievance redressal forum dated March 22, 2018 and April 26, 2018. Subsequent to the circular dated April 3, 2018 issued by the Central Board of Indirect Taxes and Customs, the assessee submitted a letter dated April 27, 2018 to the jurisdictional assessing officer. The assessee received no response from the Government and his issues were not resolved, and as a result, it could not revise form TRAN-1. On a writ petition :

[*The court directed the Department to either open the portal so as to enable the assessee to file form TRAN-1 electronically or to accept a manually filed TRAN-1 form on or before September 13, 2019 and process the assessee's claims thereafter in accordance with law.*]

BLUE BIRD PURE PVT. LTD. *v.* UNION OF INDIA [2019] 68 GSTR 340 (Delhi) *followed*.

Cases referred to :

Bhargava Motors *v.* Union of India [2019] 66 GSTR 114 (Delhi) (para 5)

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Blue Bird Pure Pvt. Ltd. *v.* Union of India [2019] 68 GSTR 340 (Delhi) (para 3)

Uninav Developers Pvt. Ltd. *v.* Union of India [2020] 79 GSTR 1 (Delhi) (para 5)

W. P. (C) No. 10811 of 2018.

Karan Sachdev, Kunal Kapoor and *Ms. Avisha Khatri* for the petitioner.

Satyakam, Additional Standing Counsel, for the respondents/ GNCTD.

Amit Bansal, Standing Counsel with *Aman Rewaria* for respondent Nos. 2 and 3.

ORDER

1 This is yet another petition where the petitioner is disabled from conducting its normal course of business and availing the Cenvat credit/input-tax credit due to the prevalent glitch with the TRAN-1 form which is required to be filed online. The brief facts are that for the period ending on June 30, 2017 the petitioner had filed on December 27, 2017 an input-tax credit of eligible duty (CVD) of Rs. 1,00,67,087.

2 With the coming into force of the GST regime on July 1, 2017 the petitioner expected, and legitimately, that he would be able to carry forward the aforementioned Cenvat credit/ITC. The petitioner states that after filing the TRAN-1 form on December 27, 2017 online, the petitioner noticed that the electronic account ledger did not reflect the entire amount of Rs. 1,00,67,087 and instead only reflected credit of Rs. 6,54,978 which consisted of Rs. 4,48,727 paid on advance AMC as shown in the last service tax return, Rs. 94,941 towards "credit" under column 7(a) of the form and Rs. 1,11,310 towards "credit" under column 7(b), excluding Rs. 94,12,109 towards the closing balance Cenvat credits of the last return filed in time under service tax. The TRAN-1 could not be filed before the said date on account of glitches in the portal.

3 It is stated thereafter that the petitioner contacted the GST help desk, but did not receive concrete answers, and believing that this was a mere system error which would be corrected in due course of time, waited for around two months for the same. Thereafter, the petitioner mailed written submissions to "*helpdesk@gst.gov.in*" on March 8, 2018, followed by online complaints to the self grievance redressal forum dated March 22, 2018 and April 26, 2018. It is further submitted that subsequent to the circular dated April 3, 2018 by the Central Board of Indirect Taxes and Customs, the petitioner submitted a letter dated April 27, 2018 to the jurisdictional

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assessing officer, SGST of the petitioner. It is stated that the petitioner also noticed that there were glitches arising in filing of form GST TRAN-1 in three other States excluding Delhi as well, and subsequently, the petitioner also submitted further letters dated June 13, 2018 to the assessing officer, SGST as well as letter dated August 8, 2018 to the Commissioner, GST. However, the petitioner received no response from the Government and his issues were not resolved, as a result, it could not revise the TRAN-1 form as it was legally entitled to. The above representations have been enclosed with the petition. Reliance has also been placed on the order dated July 22, 2019 in W. P. (C) No. 3798 of 2019 *Blue Bird Pure Pvt. Ltd.* v. *Union of India* [2019] 68 GSTR 340 (Delhi), wherein under similar circumstances, the respondents were directed to either open the online portal to enable the petitioner therein to file the revised TRAN-1 form or accept the manually filed TRAN-1 form with due corrections.

4 In the short affidavit filed on behalf of the respondents, it is stated that the last date of the extended time period for filing of the GST TRAN-1 form, subsequent to the orders dated September 21, 2017, October 28, 2017 and November 15, 2017 under the CGST Rules, 2017, was the date on which the petitioner filed its form, i. e., December 27, 2017. Similarly, the last extended date even for revision of the TRAN-1 form was only up till December 27, 2017. It is thus contended that even though the petitioner realized that it had committed an inadvertent error in filing of the said form, such error was discovered only after the last date for filing of such TRAN-1 form was over. It is stated that the petitioner only raised the said issue two months after filing the said form, and hence it is the petitioner who failed to act within the time-limit prescribed and is now maliciously trying to project its case as falling under the umbrella of system/technical glitches in the online portal. The said affidavit is however silent on whether the petitioner's case has been considered by the IT Grievance Redressal Committee constituted by the respondents to look into similar complaints.

5 The court has in several recent orders including order dated May 13, 2019 in W. P. (C) No. 1280 of 2018 (*Bhargava Motors* v. *Union of India* [2019] 66 GSTR 114 (Delhi)) and order dated July 29, 2019 in W. P. (C) No. 13772 of 2018 (*Uninav Developers Pvt. Ltd.* v. *Union of India* [2020] 79 GSTR 1 (Delhi)) directed the respondents in similar circumstances to either re-open the portal to enable the petitioners therein to again file the TRAN-I form electronically or to accept a manually filed TRAN-1 form. The court has in those orders noted that the GST system is still in the "trial and error" phase.

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For the reasons explained in the above mentioned orders, the court directs the respondents in the present case also to either open the portal so as to enable the petitioner to file the TRAN-1 electronically or to accept a manually filed TRAN-1 form on or before September 13, 2019. The petitioner's claims thereafter be processed in accordance with law. **6**

The petition is disposed of in the above terms. **7**

[2020] 79 GSTR 7 (Delhi)

[In the Delhi High Court]

SKH SHEET METALS COMPONENTS

v.

UNION OF INDIA AND OTHERS

Manmohan and Sanjeev Narula JJ.

June 16, 2020.

HF ▶ Assessee

Goods and services tax—Input-tax credit—Transitional provisions—Time-limit for filing form TRAN-1—Consistent extension of time for filing in case of technical glitches—No provision prescribing consequences for failure to file within time-limit—Time-limit to be taken as directory—Not limited to technical glitches only—Extension applies to genuine cases of human error—Central Goods and Services Tax Act (12 of 2017), s. 140—Central Goods and Services Tax Rules, 2017, r. 117.

Since the goods and services tax law is a major tax reform in indirect taxation, difficulties were faced by assessees in filing the statutory forms for transition from the erstwhile regime. In this process, human errors cannot be ruled out and if they occur, the solution is not to criticize the taxpayer for the fault, but instead, for the Government to endeavour to find a resolution. If the tax filing procedures do not provide for an appropriate avenue to correct a bona fide mistake, that would lead to taxpayers avoiding compliances. The fact that the necessary forms under goods and services tax laws are difficult to identify and the Government had to put efforts to assist citizens in understanding the procedures, cannot be ignored. Till date, goods and services tax awareness campaigns and citizen outreach programmes are in place to acquaint taxpayers with the goods and services tax filing procedures. Particularly, with the entire system being online, the interface between the taxpayers and authorities is entirely electronic. This requires some basic fundamental knowledge for using the technology.

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Section 140 of the Central Goods and Services Tax Act, 2017 entitles assessees to carry forward in their electronic credit ledger, the amount of Cenvat credit under the existing law in such manner as may be prescribed. The power to prescribe a time-limit for filing TRAN-1 (to carry over input-tax credit from the earlier regime) was provided by the insertion of words "within such time" in the section with retrospective effect from July 1, 2017. The Government amended the rules and introduced sub-rule (1A) empowering the Commissioner to extend the date for submitting the declaration electronically in form TRAN-I by a further period (not beyond December 31, 2019). This sub-rule is applicable to registered persons who could not submit the declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Goods and Services Tax Council had made a recommendation for such extension. This sub-rule (1A) begins with a non obstante clause. Thus, by introducing the provision, notwithstanding the embargo introduced under rule 117(1) of the Rules, the Government opened a narrow window for registered persons who faced technical difficulties on the common portal while filing form TRAN-1. Thus the Central Government has been consistently extending the time for filing form TRAN-1 even beyond December 31, 2019 for those taxpayers who are covered by rule 117(1A). Recently the period was extended up to March 31, 2020. Thus, when the time- limits stipulated under rule 117(1) and rule 117(1A) are contrasted, the time-limit of 90 days is not sacrosanct.

For cases covered under section 140(1) of the Central Goods and Services Tax Act, 2017 input-tax credit under the existing laws is a vested right. This credit vested in favour of the taxpayer would have been utilized for payment of outgoing taxes under the respective legislations, but for the repeal of the existing laws. In order to claim this credit, declaration in form TRAN-1 is required to be furnished on the common portal within ninety days from the appointed day, i. e., July 1, 2017 or within such extended time. Thus, the transitional provisions and the language of section 140 of the Act in particular, even after amendment, manifest the intention to save the accrued and vested input-tax credit under the existing laws. The rules have to be interpreted keeping this objective in focus. The Cenvat credit which stood accrued to the assessee is a vested right and is protected under article 300A of the Constitution of India and cannot be taken away without authority of law, on frivolous grounds which are untenable.

Rule 117 provides for a time period of 90 days and also stipulates that the same can be extended for a further period not exceeding 90 days. However, under rule 117(1A), multiple extensions beyond 180 days have been granted

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for taxpayers who faced "technical difficulties on common portal". There is no provision in the statute that would stipulate a consequence for failure to adhere to the timelines. Rule 117 of the Central Goods and Services Tax Rules also does not indicate any consequence for non-compliance with the condition. Both the Act and Rules do not provide any specific consequence on failure to adhere to the timelines. Since the consequences for non-compliance are not indicated, the provision has to be seen as directory. If the timelines are interpreted to be mandatory, the failure to fulfil the obligation of filing TRAN-1 within the stipulated period, would seriously prejudice taxpayers, for whose benefit section 140 has been provided by the Legislature. Interpreting the procedural timelines to be mandatory would run counter to the intention of the Legislature and defeat the purpose for which the transitionary provisions have been provided. They have to be construed as directory and not mandatory.

The rule suffers from the vice of vagueness and concept of "technical difficulty on common portal" and its applicability has not been adequately defined anywhere. Because of the absence of any defining words, there is no predictability about the application of this rule for the class of cases to which it would apply. In the absence of a criteria, the application of the provision would suffer from arbitrariness. The Goods and Services Tax Council expanded the mandate of the Grievance Redressal Committee to include cases of taxpayers who had been victims of system failure, whether technical or otherwise. This was evident from its office memorandum of February 19, 2019. This indicates that the Council recognized that there could be errors apparent on the face of the record that could be non-technical in nature and merit leniency. In line with the spirit of the decision of the Council and the blurring thin line between technical and non-technical difficulty, keeping in view that entire filing is electronic, the restrictive applicability of rule 117(1A) is arbitrary. There is no intent to deny extension of time to deserving cases where the delay in filing was on account of human error.

The assessee was entitled to transitional credit of Rs. 6,52,58,081 comprising Central excise Cenvat credit, service tax Cenvat credit and input value added tax credit. In order to avail of the credit in the electronic credit ledger under the goods and services tax laws, on August 27, 2017, it filed the prescribed form TRAN-1. After submission of the form, the assessee realised that only Rs. l,01,24,382 was reflected on the goods and services tax portal. The Cenvat credit comprising Central excise and service tax of Rs. 3,86,54,605 and Rs. 1,64,79,081, respectively was not displayed in the electronic credit ledger. The assessee brought the mismatch to the notice of the Department by

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email to which the Department replied suggesting that the assessee avail of the option to rectify the error. The date for filing form TRAN-1 was meanwhile extended till December 27, 2017. The assessee filed a revised declaration in form TRAN-1 on December 27, 2017 and reflected the correct figures under column 5(a) of the form, but the amount was still not transferred to the electronic credit register and was shown as "blocked credit". The assessee registered a complaint dated February 5, 2018, with the Goods and Services Tax Helpdesk. The helpdesk acknowledged the complaint and informed the assessee that they were working on the issue and the status thereof shall be updated and intimated. The assessee by letter dated February 6, 2018, made further representations to the Assistant Commissioner and the Principal Commissioner but without any positive outcome. Subsequently, an Information Technology Grievance Redressal Committee for the purpose of resolution of difficulties faced by taxpayers in filing returns forms was formed. Pursuant thereto, the assessee pursued the matter by email dated April 24, 2018, in response to which the office of Principal Commissioner sought clarification on various points. This was promptly provided on April 26, 2018. The receipt of the communication was acknowledged. However, the representations did not bring about a favourable outcome. The assessee continued to follow up with the Department and each time was informed that the issues were being examined and shall be resolved after due and proper verification. The assessee filed a writ petition during the course of hearing which the Department informed the court that the Grievance Redressal Committee which was originally mandated to consider cases relating to technical glitches, would now also consider cases involving human errors and it would be appropriate for the assessee to make a representation before the Jurisdictional Commissioner who upon examination and satisfaction of the grievance of the assessee, shall forward the case to the Committee for undertaking appropriate action. The court disposed of the petition with a direction to the assessee to file a representation before the authorities. Accordingly, the assessee filed yet another representation. The representation was acknowledged and the assessee intimated that the representation had been forwarded to the Grievance Redressal Committee. Ultimately, the case of the assessee was rejected by the Grievance Redressal Committee on the ground that it was a case of a "non-technical" human error in which case the benefit of rule 117(1A) could not be given. Since the letter rejecting the assessee's case did not elucidate any reasons for the rejection, the assessee requested the Department to provide the reasons for denial. No response was received to the letter. Its application under the Right to Information Act was also rejected. On a writ petition :

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Held, *allowing the petition, (i) that the credit which was reflected in value added tax form 231 of Rs. 1,01,24,382 instead of being added to the remaining amount reflected in the Central excise returns and service tax returns, was instead erroneously reflected under the heading "Cenvat credit admissible as input tax credit". Thus, for this clerical mistake, there was short transitioning of the credit, as a result whereof, the assessee stood to lose a huge amount of input-tax credit, totalling Rs. 5,51,33,699 that stood vested in its favour under the erstwhile regime. The stand of the Department was that since the assessee had committed this mistake, it ought to suffer therefor. The stand of the Central Government was not justified.*

(ii) That form TRAN-1 was filed promptly, within the stipulated period. Immediately, when the assessee noticed that the entire credit had not been transitioned, it started corresponding with the Department in the hope that the matter would be resolved and the mistake would be rectified. Various representations and efforts were made by the assessee in this direction. The Departmnet's contention that since the assessee faced no technical glitch at the stage of filing of the form, the case did not qualify for any relaxation was contrary to the decision of the Goods and Services Tax Council. The Council categorically expanded the mandate of Grievance Redressal Committee and observed that it would also look into cases where "there is an error" apparent on the face of the record. Visibly there was an error apparent on the face of record. The input tax credit reflected in the returns was shown as "blocked credit" and was not a mistake in the entry of figures. TRAN-1 form was filed within the stipulated period and revision thereof, to correct an error, would relate back to the date of filing. There was no convincing reason to hold that as on date, the revision of the return, would be time-barred and treated as a fresh return. The revised data could be easily verified and correlated with the tax returns filed in the erstwhile regime. In fact, rule 120A of the Central Goods and Services Tax Rules, 2017 enabled taxpayers to revise the form TRAN-1 on the common portal within the time specified in the rules or such further period as might be extended by the Commissioner. In the present case, the mistake was clerical in nature. The revision could not be treated as a fresh filing.

(iii) That the assessee's case was considered and rejected by the Grievance Redressal Committee, despite the recommendation of the jurisdictional Commissionerate. The Department had given an undertaking before the High Court that the grievance of the assessee would be redressed and its case would not be rejected only on the ground that it was received beyond the cut-off date. The Department, without giving any cogent reasoning, rejected the assessee's

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representation. The letter exhibited complete non-application of mind. The grounds for rejection were being withheld. The approach of the Department was grossly unjust and to be disapproved. The assessee, as a matter of right, should know the specific reasons for the rejection of its case. The restriction that prevented the assessee from taking the entire credit by revising the return, based on the footing of a "human error" and not "technical difficulty on common portal" was wholly unreasonable, being irrational and arbitrary and therefore, violative of article 14 of the Constitution. In absence of any clause defining "technical difficulty on common portal" the assessee's case would even be covered by rule 117(1A) of the Rules. In effect, the input tax credit had been expropriated without any lawful sanction. The input tax credit that was shown in the returns under the existing laws were taxes that stood paid to the respective Governments for goods or services and were available for adjustment or utilization in accordance with law. Now, on account of a clerical mistake the taxes paid were being appropriated, without cause. Yet, deserving "non-technical" cases like the present one had been ignored and this exclusion was arbitrary and irrational.

(iv) That the assessee was permitted to revise TRAN-1 form on or before June 30, 2020 and transition the entire input tax credit, subject to verification by the Department. The Department was to either open the online portal so as to enable the assessee to file revised declaration TRAN-1 electronically, or to accept it manually.

BRAND EQUITY TREATIES LIMITED *v.* UNION OF INDIA [2020] 77 GSTR 390 (Delhi) *relied on*.

Cases referred to :

A. B. Pal Electricals Pvt. Ltd. *v.* Union of India [2020] 77 GSTR 382 (Delhi) (paras 12, 22)

Adfert Technologies Pvt. Ltd. *v.* Union of India [2020] 73 GSTR 267 (P&H) (para 12)

Blue Bird Pure Pvt. Ltd. *v.* Union of India [2019] 68 GSTR 340 (Delhi) (para 12)

Brand Equity Treaties Limited *v.* Union of India [2020] 77 GSTR 390 (Delhi) (paras 12, 13, 17, 18, 19, 22, 27)

Godrej & Boyce Mfg. Co. Ltd. *v.* Union of India [2020] 73 GSTR 107 (Delhi) (para 12)

Jakap Metind Pvt. Ltd. *v.* Union of India [2020] 76 GSTR 220 (Guj) (para 12)

Lease Plan India Private Limited *v.* Government of National Capital Territory of Delhi [2020] 72 GSTR 116 (Delhi) (para 12)

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Micromax Informatics Ltd. *v.* Union of India [2020] 77 GSTR 390 (Delhi) (para 12)

Siddharth Enterprises *v.* Nodal Officer [2019] 71 GSTR 346 (Guj) (para 12)

Vertiv Energy Private Limited *v.* Union of India [2020] 79 GSTR 4 (Delhi) (para 12)

W. P. (C) No. 13151 of 2019.

Dharnendra K. Rana with *Ms. Anshika Aggarwal* for the appellant.

Sreemithun, Advocate, for the Union of India.

Harpreet Singh, Standing Counsel for Goods and Services Tax.

JUDGMENT

The judgment of the court was delivered by

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

Brief factual background :

2 Petitioner-SKH Sheet Metals Components Private Limited, set up its unit at Pune, Maharashtra for manufacture of final products and sale to OEMs. The indirect tax structure prevailing in India, prior to July 1, 2017, comprised of multifarious duties and taxes imposed by the Centre as well as States. Excise duty was levied under Central Excise Act, 1944 ("the Excise Act") on manufacture of excisable goods ; service tax was imposed under the Finance Act, 1994 ("the Finance Act") on provision of services in the taxable territory. Similarly, sale of goods was exigible to Value Added Tax ("VAT") imposed under respective State VAT enactments and Central sales tax ("CST") under the Central Sales Tax Act, 1956 ("the CST Act"), depending on whether the goods were sold intra-State or inter-State. (hereinafter the legislations referred hereinabove are being collectively referred to as "existing laws"). In this regard, petitioner obtained registration with the jurisdictional authorities under various legislations listed hereinabove. It also availed Cenvat credit of specified duties and taxes paid on inputs, capital goods and input services in terms of the Cenvat Credit Rules, 2004 ("the Credit Rules") and input-tax credit of VAT paid on

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purchases in terms of the Maharashtra VAT Act, 2002 ("the MVAT Act"). The petitioner periodically filed returns by way of forms specified under the above-noted legislations, and declared the details of input balance of credit, credit availed during the return period, and closing balance of credit available for carry forward for the next period. For the period ending June 30, 2017, the closing balance of credit available for carry forward, as declared by the petitioner, reflects the figures tabulated hereunder :

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

3 The indirect tax regime had its watershed moment with the advent of the goods and services tax, which has become operational by way of several enactments (hereinafter referred as "GST laws"), with effect from July 1, 2017 ("appointed date") and existing laws stand repealed. The GST laws framed by the parliament and the State Legislatures, recognize the fact that taxpayers had ITC under the existing laws, and provide for elaborate transitional arrangements to save the pending as well future claims relating to existing law made before, on or after the appointed day. In order to achieve this objective, GST laws permit the registered persons to migrate the amount of Cenvat credit that was carried forward in the returns under the existing laws in the electronic credit ledger under GST laws.

4 The petitioner asserts that it is entitled to transitional credit of Rs. 6,52,58,081 comprising of Central excise cenvat credit of Rs.3,86,54,605, Service Tax Cenvat credit of Rs. l,64,79,081 and input MVAT credit of Rs. l,01,24,382. In order to avail the credit in the electronic credit ledger under the GST laws, on August 27, 2017, much before the last date specified by the Central Government, the petitioner filed a form prescribed for this purpose, known as "GST TRAN-1". However, on submission of the said form, the petitioner realized that as against the total credit of Rs. 6,52,58,081, only Rs. l,01,24,382 was reflected on the common GST portal. The Cenvat credit of Rs. 5,51,33,699 comprising of Central excise and service tax of Rs. 3,86,54,605 and Rs. 1,64,79,081, respectively was not displayed in the electronic credit ledger.

5 Vide email dated October 9, 2017, petitioner brought the mismatch to the notice of the respondents, and the difficulty faced in utilization of the entire credit, since the Cenvat under Central excise and service tax had not been replicated in the electronic credit register. Respondents suggested that since the common portal itself enables the taxpayers to make neces-

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sary amendments, petitioner could avail the said option to rectify the error. Around this time, respondents issued Order No. 9/2017–GST, extending the date of filing for GST TRAN-1 till December 27, 2017. Petitioner claims that it filed a revised declaration in the nature of form GST TRAN-1 on December 27, 2017 and reflected the correct figures under column 5(a) of the form, however, the amount was still not transferred to the electronic credit register and was shown as "blocked credit". petitioner then registered a complaint dated February 5, 2018, with the GST helpdesk. GST helpdesk duly acknowledged the complaint, generated "request ID" and informed the petitioner that they were working on the issue and the status thereof shall be updated and intimated.

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

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

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

8 After considering the contents of the note and the minutes of 32nd GST Council meeting, Bombay High Court vide order dated February 27, 2019 disposed of the petition with direction to the petitioner to file a representation before concerned authorities in terms of the 32nd GST Council meeting. The said is extracted hereunder :

> "1. *In the light of the note placed on record by Shri Mishra annexing therewith the Office Memorandum dated February 19, 2019 issued by the Government of India, Goods and Services Tax Council seeking to address certain non technical issues, namely, human errors and putting in place a mechanism to take corrective measures, we do not think anything survives in this writ petition*. It is disposed of.
>
> 2. However, the learned counsel for the petitioner brings to our notice that the cut-off date mentioned in this office memorandum is February 25, 2019 whereas this office memorandum is dated February 19, 2019. This period is hopelessly inadequate for accessing the authorities and by emode.
>
> *On instructions, Shri Mishra says that if the petitioner forwards its requests or grievances within a period of one week from today, the concerned authorities will attempt to redress them and will not throw them out only on the ground that they are received beyond the cut-off date*. The statement made by Shri Mishra, on instructions, is accepted as an undertaking to this court." (emphasis[1] supplied)

1. Here italicised.

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

> "Your representation pertaining to TRAN-1 credit was forwarded to this office by the Nodal Officer, CGST, Pune-I Commissionerate vide e-mail dated April 27, 2018. It was submitted to the IT Grievance Redressal Committee (ITGRC) for appropriate decision in the matter. As per the decision received from ITGRC, your case has not been approved. The decision has already been communicated by this office to the Nodal Officer, CGST, Pune-I Commissionerate vide e-mail dated March 20, 2019."

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

> "This information sought under RTI does not fall under definition of Information transitional credit as per section 2(f) of the RTI Act, 2005. The CIC vide its decision No. CIC/POWER/A/2017/105911, dated December 1, 2017 held that '. . . RTI Act is not the proper law for redressal of grievances and that there are other appropriate fora for resolving such matters . . .'.
>
> Hence, no further action is required in the matter."

11 In the above factual background, the petitioner has filed the present writ petition, invoking the extraordinary writ jurisdiction of this court under article 226 of the Constitution of India.

Submissions of the parties :

12 Learned counsel for the petitioner narrated the factual background and argued that the respondents have acted in a most unreasonable manner by denying the petitioner benefit of transitional provision without any cogent reason. The petitioner is seeking transition of ITC that had accrued and vested in its favour under the erstwhile regime. The petitioner had acted promptly and filed the statutory GST TRAN-1 form within the specified time. However, since there was a bona fide error in filling the same, the

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petitioner filed a revised return correcting the same and yet, the entire credit is still not exhibited in the electronic credit ledger. The short transitioning is due to some problem at respondent's end. The issue was flagged, but was not rectified on account of frivolous and baseless reasons. He further argued that petitioner has been tirelessly following up with the respondent and submitted a litany of complaints and representations, however all of those have fallen on deaf ears. The conduct of the respondents reflects their narrow mindset and attitude in resolution of troubles faced by taxpayers. They are only interested in finding ways and means to deny the petitioner the benefit which is legitimately due to it. The learned counsel for the petitioner also relied upon several decisions such as *Blue Bird Pure Pvt. Ltd.* [2019] 68 GSTR 340 (Delhi) (Delhi High Court) W. P. (C) No. 3798 of 2019, *Adfert Technologies Pvt. Ltd.* [2020] 73 GSTR 267 (P&H) (P&H High Court) C. W. P. No. 30949 of 2018 (O&M), *Vertiv Energy Private Limited* [2020] 79 GSTR 4 (Delhi) (Delhi High Court) W. P. (C) No. 10811 of 2018, *Lease Plan India Private Limited* [2020] 72 GSTR 116 (Delhi) (Delhi High Court) W. P. (C) No. 3309 of 2019, *Godrej & Boyce Mfg. Co. Ltd.* [2020] 73 GSTR 107 (Delhi) (Delhi High Court) W. P. (C) No. 8075 of 2019, *Jakap Metind Pvt. Ltd.* v. *Union of India* [2020] 76 GSTR 220 (Guj) (Gujarat High Court) R/Special Civil Application No. 19951 of 2018 and *Siddharth Enterprises* [2019] 71 GSTR 346 (Guj) (Gujarat High Court) R/Special Civil Application No. 5758 of 2019 to argue that the several courts have permitted the similarly situated taxpayers to file the form GST TRAN-1 beyond stipulated period of time. This court has also come to the rescue of several taxpayers who had faced difficulties in filing the statutory form GST TRAN-1 on the GSTN portal, within the period specified. The courts have in fact, gone a step further and extended benefit even to those taxpayers, who may not have faced "technical glitch on the portal" but were otherwise prevented in filing the TRAN-1 form on account of certain human errors or factors and reasons which were beyond their control. In this regard, learned counsel for the petitioner specifically relied upon the decisions of this court in the case of *Blue Bird Pure Pvt. Ltd.* v. *Union of India* [2019] 68 GSTR 340 (Delhi) ; [2019] SCC OnLine Del 9250 as also the case of *A. B. Pal Electricals Pvt. Ltd.* v. *Union of India* [2020] 77 GSTR 382 (Delhi) (W. P. (C) No. 6537 of 2019), decided vide judgment dated December 17, 2019. The above-noted cases, were not strictly covered by the concept of "technical glitches", however, considering the fact that GST system was still in a trial and error phase as far as its implementation is concerned, court agreed to the fact that certain taxpayers were having genuine difficulties in filing returns and claiming input-tax credit through GSTN portal

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and allowed filing of the TRAN-1 Form beyond the stipulated date. The learned counsel also relied upon the detailed decision rendered by this court recently in a batch of cases titled as *Brand Equity Treaties Limited* v. *Union of India* [2020] 77 GSTR 390 (Delhi) ; [2020] 116 taxmann.com 415 (Delhi). He argued that petitioner's case is identical to one of the cases decided in the said batch, i. e., *Micromax Informatics Ltd.* v. *Union of India* [2020] 77 GSTR 390 (Delhi) (W. P. (C) No. 196 of 2019), where the court had taken note of facts similar to this case and allowed belated filing of TRAN-1. In the said case, the court also held that rule 117 of the GST Rules is directory in nature in so far as it prescribes the time-limit for transitioning of credit and it cannot result in forfeiture of rights of taxpayers, if the same is not availed within the period prescribed therein. Accordingly, this court allowed taxpayers to avail the input-tax credit by permitting them to file TRAN-1 form on or before June 30, 2020. The learned counsel for the petitioner further submitted that irrespective of the said decision, since admittedly the TRAN-1 form in the case of the petitioner was filed well before the specified date, notwithstanding the benefit granted by the court in the said judgment, the petitioner is entitled to transition the credit.

13 Mr. Harpreet Singh, senior standing counsel for GST on the other hand opposed the petition and submitted that the petitioner is not entitled to the benefit being sought in the present petition. Mr. Harpreet Singh argued that the petitioner can also not avail the benefit of the judgment of this court in the case of *Brand Equity Treaties Limited* [2020] 77 GSTR 390 (Delhi) ; [2020] 116 taxmann.com 415 (Delhi), as recently, with the passing of the Finance (Amendment) Act, 2020 which has been given presidential assent on March 27, 2020, section 140 of the CGST Act has been retrospectively amended. He submits that vide section 128 of the Finance (Amendment) Act, 2020, the words "within such time" have been inserted in section 140(1) and this amendment has been given retrospective effect from July 1, 2017. Thus, the Central Government has been granted the power to prescribe the time-limit for filing TRAN-1. The absence of power to prescribe a time-limit for filing TRAN-1 was a critical factor that weighed with this court in the case of *Brand Equity Treaties* [2020] 77 GSTR 390 (Delhi) ; [2020] 116 taxmann.com 415 (Delhi) to hold that the limitation period under rule 117 for filing TRAN-1 is merely directory and not mandatory. But, by virtue of retrospective amendment, there has been a change in circumstances and the benefit of the judgment in the case of *Brand Equity* [2020] 77 GSTR 390 (Delhi) ; [2020] 116 taxmann.com 415 (Delhi) is no longer available to the petitioner. Mr. Harpreet Singh further argued that ITGRC set up vide Circular No. 39/13/2018, dated April 3, 2018, examined

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

Analysis and findings :

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

Form TRAN-1 filed on August 27, 2017 under section 140(1) of CGST Act for transitioning closing balance of credits in erstwhile returns		*Credit actually transitioned in electronic credit ledger of the petitioner*	*Credit not transitioned to the electronic credit ledger of the petitioner*
Erstwhile return	*Amount (Rs.)*	*Amount (Rs.)*	*Amount (Rs.)*
ER-1 (Excise)	3,86,54,605	1,01,24,382	5,51,33,699
ST-3 (Service tax)	1,64,79,094		
Form 231 (Maharashtra VAT)	1,01,24,382		
Total	6,52,58,081	1,01,24,382	5,51,33,699

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

Sr. No.	*Registration No. under existing law*	*Tax period*	*Date of filing of the return*	*Balance Cenvat credit*	*Cenvat credit admissible as ITC*
1.	AACCV0528KX M001	062017	10/07/2017	3,86,54,605.00	1,01,24,382.00

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2.	AACCV0528KS T001	062017	13/08/2017	1,64,79,094.00	0.00

16 When we make a comparison of the figures reflected in the screenshot with those in the statutory returns, it is revealed that the credit which was reflected in form 231 under the Maharashtra VAT Act of Rs. 1,01,24,382 instead of being added to the remaining amount reflected in the tax returns under the Excise Act (ER-1) and Service Tax Act (ST-3), was instead erroneously reflected under the heading "*Cenvat credit admissible as ITC*". Thus, for this clerical mistake, there has been short transitioning of the credit, as a result whereof, petitioner stands to lose huge amount of ITC, totalling to Rs. 5,51,33,699 that stood vested in it's favour under the erstwhile regime.

The GST system and its procedural fallibility and shortcomings :

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

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extend proper assistance, information and education to taxpayers so that they fulfil their obligations. This should be the critical area of focus in the area of tax administration which would ensure compliance with tax laws and also build confidence amongst taxpayers. Indeed, by explaining the significance of payment of taxes, and the role that a taxpayer plays in building the nation, the Government endeavors to encourage and motivate the citizens to be tax compliant. If we strive to achieve this goal, it is necessary that we must also provide appropriate channels for resolution of their genuine problems. A successful resolution, a positive response and an effective, timebound redressal mechanism is crucial for building confidence amongst the taxpayers and for successful tax administration. We have in a series of decisions, discussed as to how the advent of GST law created challenges for the taxpayers because of the lack of understanding of procedures provided therein. In fact, in the recent decision in *Brand Equity* [2020] 77 GSTR 390 (Delhi) ; [2020] 116 taxmann.com 415 (Delhi), this aspect has been discussed elaborately and we need not reiterate the same.

The Finance (Amendment) Act, 2020 and its impact ; judgment in *Brand Equity* [2020] 77 GSTR 390 (Delhi) ; [2020] 116 taxmann.com 415 (Delhi).

18 To deny the petitioner relief sought by them, only explanation alluded to in the counter-affidavit is that benefit of the judgment of this court in *Brand Equity* [2020] 77 GSTR 390 (Delhi) ; [2020] 116 taxmann.com 415 (Delhi) is no longer available. It is argued that in view of retrospective amendment to section 140 of the CGST Act, 2017, introduced by the Finance (Amendment) Act, 2020, there has been a relevant change in circumstances and thus the abovesaid decision is no longer valid. The power to prescribe a time-limit for filing TRAN-1 has been provided by the insertion of words "within such time" in section 140 with retrospective effect from July 1, 2017. It has been argued that now that the amendment specifically provides for prescribing a time-limit for filing TRAN-1 form, the period so provided under rule 117 would have legal sanctity and therefore the factor which weighed with this court to hold that the limitation period provided under rule 117 for filing TRAN-1 is merely directory and not mandatory, no longer holds good.

19 The above amendment to section 140 came to be notified on May 18, 2020, vide Notification No. 43/2020, dated May 16, 2020. Thus, the said amendment came into force after the date of the decision in *Brand Equity* [2020] 77 GSTR 390 (Delhi) ; [2020] 116 taxmann.com 415 (Delhi). The said amendment was also not cited before the court to contest the petitions. With that being said, since, there is no specific challenge to the amend-

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ment introduced by section 128 of the Finance (Amendment) Act, 2020, we do not want to venture into legality of the said provision, viz-a-viz., the judgment of *Brand Equity* [2020] 77 GSTR 390 (Delhi) ; [2020] 116 taxmann.com 415 (Delhi).

20 Nevertheless, all things considered, in spite of the amendment, we can say without hesitation that the said decision is not entirely resting on the fact that statute (CGST Act) did not prescribe for any time-limit for availing of the transition of the input-tax credit. There are several other grounds and reasons enumerated in the said decision and discussed hereinafter, that continue to apply with full rigour even today, regardless of amendment to section 140 of the CGST Act.

Arbitrary distinction of timelines under rules 117 and 117(1) :

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

> "*Amended section 140 of the CGST Act :*
>
> 140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of Cenvat credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law *within such time* and in such manner as may be prescribed :
>
> *Rule 117 and rule 117(1A) :*
>
> 117. *Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day.*—(1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in *form GST TRAN-1*, duly signed, on the common portal specifying therein, separately, the amount of input-tax credit of eligible duties and taxes, as defined in *Explanation 2* to section 140, to which he is entitled under the provisions of the said section :
>
> Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days :
>
> Provided further that where the inputs have been received from an export oriented unit or a unit located in Electronic Hardware

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Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the Cenvat Credit Rules, 2004.

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

22 The first proviso of rule 117, stipulates that the Commissioner on the recommendations of the Council can extend the period of ninety days for filing TRAN-1, by a further period, not exceeding ninety days. As also noticed in *Brand Equity* [2020] 77 GSTR 390 (Delhi) ; [2020] 116 taxmann.com 415 (Delhi), the Government amended the rules and introduced sub-rule (1A) empowering the Commissioner to extend the date for submitting the declaration electronically in form GST TRAN-1 by a further period (not beyond December 31, 2019). This sub-rule is applicable to registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the GST Council had made a recommendation for such extension. This sub-rule (1A) begins with a non obstante clause—"notwithstanding anything contained in sub-rule (1)". Thus, by introducing the said provision, notwithstanding the embargo introduced under rule 117(1) of the CGST Rules, the Government opened a narrow window for registered persons who faced technical difficulties on the common portal while filing form TRAN-1. The Central Government has been consistently extending the time period for filing the form TRAN-1 even beyond December 31, 2019 for those taxpayers who are covered by rule 117(1A). Recently in view of Order No. 1/2020-GST, dated February 7, 2020 issued by Government of India, Ministry of Finance, the period was extended upto March 31, 2020. Thus, when we contrast the time-limit stipulated under rule 117(1) and rule 117(1A), we find that the time-limit of 90 days is not sacrosanct. In *Brand Equity* [2020] 77 GSTR 390 (Delhi) ; [2020] 116 taxmann.com 415 (Delhi), that court has observed that the government has not ascribed any meaning to the words "*technical difficulties on the common portal*" and it cannot be interpreted in a restrictive manner. The relevant portion is extracted hereinbelow (pages 409 to 411 in 77 GSTR) :

"18. In abovenoted circumstances, the arbitrary classification, introduced by way of sub-rule (1A), restricting the benefit only to tax-

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payers whose cases are covered by 'technical difficulties on common portal' subject to recommendations of the GST Council, is arbitrary, vague and unreasonable. What does the phrase 'technical difficulty on the common portal' imply ? There is no definition to this concept and the respondent seems to contend that it should be restricted only to 'technical glitches on the common portal'. We, however, do not concur with this understanding. 'Technical difficulty' is too broad a term and cannot have a narrow interpretation, or application. Further, technical difficulties cannot be restricted only to a difficulty faced by or on the part of the respondent. It would include within its purview any such technical difficulties faced by the taxpayers as well, which could also be a result of the respondent's follies. After all, a completely new system of accounting ; reporting of turnover ; claiming credit of prepaid taxes ; and, payment of taxes was introduced with the implementation of the GST regime. A basket of Central and State taxes were merged into a single tax. New forms were introduced and, as aforesaid, all of them were not even operationalised. Just like the respondents, even the taxpayers required time to adapt to the new systems, which was introduced as a completely online system. Apart from the shortcomings in the system developed by GSTN Ltd., the assessees also faced the challenges posed by low bandwidth and lack of computer knowledge and skill to operate the system. It is very unfair on the part of the respondents, in these circumstances, to expect that the taxpayers should have been fully geared to deal with the new system on day-one, when they themselves were completely ill-prepared, which led to creation of a complete mess. The respondents cannot adopt different standards—one for themselves, and another for the taxpayers. The GST regime heralded the system of seamless input-tax credits. The successful migration to the new system was a formidable and unprecedented task. The fractures in the system, after its launch, became visible as taxpayers started logging in closer to the deadline. They encountered trouble filing the returns. Petitioners who are large and mega corporations—despite the aid of experts in the field, could not collate the humongous data required for submission of the statutory forms. Courts cannot be oblivious to the fact that a large population of this country does not have access to the internet and the filing of TRAN-1 was entirely shifted to electronic means. The Nodal Officers often reach to the conclusion that there is no technical glitch as per their GST system laws, as there is no information stored/logged that would indicate that the taxpayers attempted to save/

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submit the filing of form GST TRAN-1. Thus, the phrase 'technical difficulty' is being given a restrictive meaning which is supplied by the GST system logs. Conscious of the circumstances that are prevailing, we feel that taxpayers cannot be robbed of their valuable rights on an unreasonable and unfounded basis of them not having filed TRAN-1 form within 90 days, when civil rights can be enforced within a period of three years from the date of commencement of limitation under the Limitation Act, 1963.

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

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provision. In order to avail the benefit, no restriction has been put under any provisions of the Act in terms of the time period for transition. The time-limit prescribed for availing the input-tax credit with respect to the purchase of goods and services made in the pre-GST regime, cannot be discriminatory and unreasonable. There has to be a rationale forthcoming and, in absence thereof, it would be violative of article 14 of the Constitution. Further, we are also of the view that the Cenvat credit which stood accrued and vested is the property of the assessee, and is a constitutional right under article 300A of the Constitution. The same cannot be taken away merely by way of delegated legislation by framing rules, without there being any overarching provision in the GST Act. We have, in our judgment in *A. B. Pal Electricals Pvt. Ltd.* [2020] 77 GSTR 382 (Delhi) emphasized that the credit standing in favour of the assessee is a vested property right under article 300A of the Constitution and cannot be taken away by prescribing a time-limit for availing the same.".

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

"*In 32nd GST Council meeting, it was decided that the ITGRC shall also consider certain nontechnical issues, viz., errors apparent on the face of record, where the following conditions are satisfied* :

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

(ii) The case has been recommended to the ITGRC through GSTN by the concerned jurisdictional Commissioner or an officer authorised by him in this behalf in case of credit of Central taxes/

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duties, by the Central authorities and in the case of credit of State taxes, the State authorities, notwithstanding the fact that the taxpayer is allotted to the Central or the State authority)." (emphasis[1] supplied)

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

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

24 We must not lose sight of the real intention of the Legislature that emerges by reading the scheme of the CGST, especially the transitional provisions and those dealing with ITC. GST seeks to consolidate multiple taxes into one, and thus it is imperative to have provisions to ensure that the transition to the GST regime is very smooth and hassle-free and no ITC (input-tax credit)/benefits earned in the existing regime are lost. In fact, an uninterrupted and seamless chain of ITC is the heart and soul of goods and services tax. This mechanism is built-in to avoid cascading of taxes. Respondents themselves claim "*one of the most important features of the GST system is that the entire supply chain would be subject to GST to be levied by Central and State Government concurrently. As the tax charged by the Central or the State Governments would be part of the same tax regime, credit of tax paid at every stage would be available as set-off for payment of tax at every subsequent stage*." (Ref : GST Flyer ; CBIC website) significantly, for the cases covered under section 140(1) of the CGST Act, ITC under the existing laws is a vested right. This credit stood vested in favour of the taxpayer and would have been utilized for payment of outgoing taxes under the respective legislations, but for the repeal of the existing laws. In order to claim this credit, declaration in form GST TRAN-1 is required to be furnished on the common portal within ninety days from the appointed day, i. e., July 1, 2017 or within such extended time. Thus, the closing balance of the Cenvat credit/VAT in the last returns filed under the existing law can be taken as credit in electronic credit ledger. Such credit would be available only when returns for the previous last six months have been filed under the existing laws. Thus, on analysis of the provisions of the Central Goods and Services Tax Act and the Rules framed thereunder, the mind of the Legislature on input-tax credit becomes clear.

1. Here italicised.

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The transitional provisions and the language of section 140 of the Act in particular, even after amendment, manifests the intention behind the said provision is to save the accrued and vested ITC under the existing law. If the Legislature has provided for saving the same by allowing a migration under the new tax regime, we have to interpret the rules keeping this objective in focus. This is the reason courts have held that Cenvat credit which stood accrued to the petitioner is a vested right and is protected under article 300A of the Constitution of India and could not be taken away by the respondents, without authority of law, on frivolous grounds which are untenable.

25 Now, when we examine the timelines framed by the Central Government, we must remain focused on the importance of the aforenoted provisions, in relation to the object that is intended to be achieved. At the same time, we also have to examine the consequences that would follow if we construe a provision to be directory and not mandatory. The purpose of the timelines prescribed is just to hasten the migration of taxes from the erstwhile regime to the new GST laws and for swift streamlining of the ITC. The timeline introduced by rule 117 is purely procedural and as discussed above the same was not treated as sacrosanct. The Central Government has continuously extended the same, by carving out an exception under rule 117(1A). Moreover, under none of the provisions of the Act, we can infer the intention of the Legislature to create this distinction by way of subordinate legislation. We also cannot decipher any intent to deny extension of time to deserving cases where delay in filing was on account of human error. This interpretation would run counter to the object sought to be achieved under section 140 of the Act which is the governing provision and exhibits the true legislative intent. The situation before us is not where the statute fixes any timelines for transitioning of credit. After the retrospective amendment of section 140, we can interpret that the power to fix the timeline and its extension has been prescribed to the Central Government which was done vide rule 117. This rule provides for a time period of 90 days and also stipulates that the same can be extended for a further period *not exceeding 90 days*. However, under rule 117(1A), multiple extensions beyond 180 days have been granted for taxpayers who faced "technical difficulties on common portal". Yet, deserving "nontechnical" cases like the present one have been ignored and this exclusion is arbitrary and irrational. Moreover, if we were to look for a provision in the statute that would stipulate a consequence for failure to adhere to the timelines, we would find none. Rule 117 of the CGST rules also does not indicate any consequence for non-compliance of the condition. Both the Act and Rules

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do not provide any specific consequence on failure to adhere to the time-lines. Since the consequences for non-consequence are not indicated, the provision has to be seen as directory. Pertinently, non-observance of the timelines would prejudice only one party-the registered person/taxpayer. If we interpret the timelines to be mandatory, the failure to fulfil the obligation of filing TRAN-1 within the stipulated period, would seriously prejudice the taxpayers, for whose benefit section 140 has been provided by the Legislature. In view of the above discussion, interpreting the procedural timelines to be mandatory would run counter to the intention of the Legislature and defeat the purpose for which the transitionary provisions have been provided and have to be construed as directory and not mandatory.

The Form was originally filed well within the prescribed time-limit :

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

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

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

27 There is yet another reason that entitles the petitioner to the relief sought in the present petition. The petitioner's case was considered and rejected by the IT Grievance Redressal Committee, despite the recommendation of the jurisdictional Commissionerate. It is also pertinent to note that the respondents had given an undertaking before the Bombay High Court in Writ Petition No. 712 of 2019 that the grievance of the petitioner will be redressed and its case will not be thrown out only on the ground that it was received beyond the cut-off date. Armed with the order of the court, when the petitioner submitted a fresh representation, respondents, without giving any cogent reasoning, as is evident from the letter dated July 12, 2019, reproduced in para 9 above, rejected the same. The said letter also exhibits complete non-application of mind. For the last three years, The petitioner has made countless complaints and representations. Respondents have consistently denied the petitioner an opportunity to revise the return without disclosing the reasons for arriving at this decision except for a cryptic oneline rejection order. Petitioner has called upon the respondents time and again to intimate specific reasons for rejection of its case. It also filed an RTI application in this regard. However, the respondents have resolutely held on to their stand. For some mysterious reason, the grounds for rejection are being withheld, as if, the same are some guarded secret. The approach of the respondents is grossly unjust and disappointing and we disapprove the same. Petitioner, as a matter of right, should know the specific reasons for the rejection of his case so that it can assail the same. Respondents had an opportunity to disclose such reasons in the counter-

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affidavit, and we are surprised to note that despite that, they have chosen to remain silent on the main issue. Instead, they have relied upon the amendment to section 140 to prevail upon us that we should not grant the benefit to the petitioner in terms of our decision in *Brand Equity* [2020] 77 GSTR 390 (Delhi) ; [2020] 116 taxmann.com 415 (Delhi).

28 The stand taken today runs counter to the assurance given before Bombay High Court and is also not borne out, from the record. It has been argued that the discrepancy in the figures has crept in because of human error and there is no provision in the Act or the rules that can be relied upon by the petitioner to reclaim the shortfall. The restriction that prevents the petitioner from taking the entire credit by revising the return, based on the footing of a "human error" and not "technical difficulty on common portal" is thus wholly unreasonable, being irrational and arbitrary and therefore, violative of article 14 of the Constitution. One-line, non-speaking order relied upon to justify the rejection cannot be countenanced. Viewed from another angle, one can construe petitioner's difficulty as technical in nature, as the short credit is reflected as blocked credit on the portal, with no provision to rectify the same electronically. In absence of any clause defining "technical difficulty on common portal", as discussed above, petitioner's case would even be covered by rule 117(1A) of the CGST Rules. GST laws required taxpayers to embrace transformative new ways. The use of technology can be daunting for many taxpayers who hitherto before, were largely dependent on conventional manual filings of returns. In order to overcome the resistance to change and encourage transformation and remodeling of the entire accounting structure at taxpayers' end, the electronic mode should be user friendly. Sadly, the respondents have not helped the situation, despite all the good intentions they may have. They have further compounded the problems for the taxpayers by being adamant about their stand and exhibited no flexibility in approach. The exactness required in compliance of tax provisions should not be construed so rigidly that permissible flexibility is completely disregarded. In effect, the ITC has been expropriated without any lawful sanction. The ITC that was shown in the returns under the existing laws were taxes that stood paid to the respective Governments for goods or services and were available for adjustment or utilization in accordance with law. Now, on account of a clerical mistake the said taxes paid are being appropriated, without cause, putting the petitioner in serious jeopardy by subjecting it to further taxation under GST without the benefit of ITC. The case before us demonstrates how the tax Department has miserably fallen short of the expectation. It is regrettable that the respondents have failed to

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address the basic and fundamental problem faced by the petitioner that occurred while filing a form, seemingly on account of a bona fide or inadvertent mistake. Instead of offering a restitutive solution they have stonewalled all the attempts made by the petitioner the injustice and prejudice caused to the petitioner is profound and it's disillusionment and despair is evident. Therefore, we cannot uphold the stand of the respondent which is founded on some illogical understanding of the Rules. We have time and again made adverse remarks on the procedural working of the GST system in several decisions. We may just add that we do not derive any pleasure when we make such observations, as comments of the court affect the reputation of the administration in the country. Such remarks are made only when we are constrained to do so. The case before us is one where there is a complete lack of understanding and fairness on the part of the tax Department. The fact that respondents have done nothing to solve the problem faced by the petitioner, fueled with the adamant stand before us, contributes to skepticism of GST technical infrastructure, which we feel should and can be easily avoided. Only if respondents were to engage with the taxpayers with a genuine intention to solve the problems, confidence in the system can be built up and such matters would not reach courts.

For the aforegoing reasons, the petition deserves to be allowed. The petitioner is permitted to revise TRAN-1 form on or before June 30, 2020 and transition the entire ITC, subject to verification by the respondents. We issue a writ mandamus to the respondents to either open the online portal so as to enable the petitioner to file revised declaration TRAN-1 electronically, or to accept the same manually. Respondents shall thereafter process the claims in accordance with law **29**

The petition is allowed in above terms. **30**

[2020] 79 GSTR 33 (P&H)

[IN THE PUNJAB AND HARYANA HIGH COURT]

SHIV SHAKTI UDHYOG

v.

UNION OF INDIA AND OTHERS

JASWANT SINGH and SANT PARKASH JJ.

June 19, 2020.

HF ▸ Assessee

GOODS AND SERVICES TAX—INPUT-TAX CREDIT—TRANSITIONAL PROVISIONS—FILING OF FORM TRAN-1—REPEATED EXTENSIONS OF LAST DATE

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TO FILE—DENIAL OF UNUTILISED CREDIT TO DEALERS UNABLE TO FURNISH EVIDENCE OF ATTEMPT TO UPLOAD TRAN-1—VIOLATION OF ARTICLE 14 AS WELL ARTICLE 300A—DEPARTMENT TO PERMIT ASSESSEE TO UPLOAD TRAN-1 ON OR BEFORE JUNE 30, 2020 AND IF IT FAILED TO DO SO, ASSESSEE AT LIBERTY TO AVAIL OF INPUT-TAX CREDIT IN GSTR-3B OF JULY 2020—HARYANA GOODS AND SERVICES TAX RULES, 2017, R. 117(1A).

On a writ petition challenging the vires of rule 117(1A) of the Haryana Goods and Services Tax Rules, 2017 and seeking direction to the Department to permit the assessee to upload form TRAN-1 electronically in order to avail of credit of excess value added tax reflected in its returns, as due to technical glitches on the goods and services tax portal, the assessee could not file form TRAN-1 :

Held, *allowing the petition, that it was not appropriate to declare the rule invalid as the assessee was entitled to carry forward Cenvat credit accrued under Central Excise Act, 1944. The Department had repeatedly extended date to file TRAN-1 where there was technical glitch. Repeated extensions of the last date to file TRAN-1 in case of technical glitches vindicated the assessee's claim that denial of unutilised credit to dealers who were unable to furnish evidence of the attempt to upload TRAN-1 would amount to violation of article 14 as well article 300A of the Constitution of India. The Department was to permit the assessee to upload TRAN-1 on or before June 30, 2020 and if it failed to do so, the assessee would be at liberty to avail of the input-tax credit in question in GSTR-3B of July 2020. The Department would be at liberty to verify the genuineness of claim made by the assessee.*

ADFERT TECHNOLOGIES PVT. LTD. *v.* UNION OF INDIA [2020] 73 GSTR 267 (P&H) *and* BRAND EQUITY TREATIES LIMITED *v.* UNION OF INDIA [2020] 77 GSTR 390 (Delhi) *followed*.

Cases referred to :

A. B. Pal Electricals Pvt. Ltd. *v.* Union of India [2020] 77 GSTR 382 (Delhi) (para 7)

Adfert Technologies Pvt. Ltd. *v.* Union of India [2020] 73 GSTR 267 (P&H) (paras 3, 5, 7, 9)

Brand Equity Treaties Limited *v.* Union of India [2020] 77 GSTR 390 (Delhi) (para 3, 5, 7, 9)

SKH Sheet Metals Components *v.* Union of India [2020] 79 GSTR 7 (Delhi) (paras 3, 7)

C. W. P. No. 8373 of 2020.

Sandeep Goyal for the petitioner.

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JUDGMENT

The judgment of the court was delivered by

JASWANT SINGH J.—Hearing conducted through video conferencing.

1 The petitioner through instant petition is challenging vires of rule 117(1A) of the Haryana GST Rules, 2017 (for short, "the Rules") and seeking direction to the respondent to permit the petitioner to electronically upload form TRAN-1 in order to avail credit of excess VAT reflected in returns, as due to technical glitches on the GST portal, the petitioner could not file form TRAN-1.

2 The petitioner, a proprietary concern, engaged in the business of processing of cotton seed by undertaking process of delinting whereby fuzz is removed from seed coat in cotton and thereafter sells the cotton and cotton seed in the market, is registered with the respondent-GST authorities under Central Goods and Services Tax Act, 2017 (for short, "the CGST Act"). The petitioner prior to July 1, 2017, i. e., date of introduction of GST was registered under the Punjab VAT Act, 2005. The petitioner was entitled to claim credit of the value added tax in respect of inputs held in stock, for which it was required to furnish information in form GST TRAN-1. However the petitioner failed to upload TRAN-I by last date, i. e., December 31, 2017. As per sub-rule (1A) of rule 117 of the Rules, the Commissioner on the recommendation of the council may extend date for submitting the declaration, in respect of registered persons who could not submit declaration by the due date on account of technical difficulties. The respondents in exercise of power conferred by sub-rule (1A) of rule 117 of the Rules, by order dated January 1, 2020 (annexure P-13) has extended date for filing TRAN-I till March 31, 2020.

3 Counsel for the petitioner contended that issue involved is squarely covered by judgment of this court in the case of *Adfert Technologies Pvt. Ltd.* v. *Union of India* [2020] 73 GSTR 267 (P&H) ; [2019-TIOL-2519-HC-P&H GST]. The SLP filed against aforesaid decision stands dismissed. Delhi High Court in the case of *Brand Equity Treaties Limited* v. *Union of India* [2020] 77 GSTR 390 (Delhi) ; 2020-TIOL-900-HC-Del-GST following decision of this court and various other High Courts has permitted the petitioners to file TRAN-1 on or before June 30, 2020. The Delhi High Court has further directed the respondents to permit all other similarly situated tax payers to file TRAN-1 on or before June 30, 2020. The Delhi High Court has further vide order dated June 16, 2020 in *SKH Sheet Metals Components* v. *Union of India* [2020] 79 GSTR 7 (Delhi) W. P. (C) No. 13151 of 2019 approved its earlier opinion in the case of *Brand Equity*

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[2020] 77 GSTR 390 (Delhi) ; 2020-TIOL-900-HC-Del-GST and permitted the petitioners to file TRAN-1 till June 30, 2020.

4 Notice of motion.

5 Mr. Saurabh Goel, Junior Panel Counsel, accepts notice on behalf of respondents 1 to 3 and 5 ; while Mr. Pankaj Gupta, Additional Advocate-General, Punjab accepts notice on behalf of respondent No. 4. They are unable to controvert the fact that the issue in hand is squarely covered by the judgment of this court in *Adfert Technologies Pvt. Ltd.* [2020] 73 GSTR 267 (P&H) ; [2019-TIOL-2519-HC-P&H GST] and of the Delhi High Court in the case of *Brand Equity* [2020] 77 GSTR 390 (Delhi) ; 2020-TIOL-900-HC-Del-GST.

6 Having heard learned counsel for the parties and perused the cited judgments, we are of the considered opinion that the issue involved is squarely covered by judgments of this court as well as of the aforesaid judgments of Delhi High Court.

7 A Division Bench of this court consisting one of us (Jaswant Singh J) vide order dated November 4, 2019 allowed a bunch of petitions which included C. W. P. No. 30949 of 2018 titled as *Adfert Technologies Pvt. Ltd.* v. *Union of India* [2020] 73 GSTR 267 (P&H) ; [2019-TIOL-2519-HC-P&H GST]. The Revenue assailing decision of this court filed SLP before honourable Supreme Court which stands dismissed vide order dated February 28, 2020. Following opinion in *Adfert Technologies* [2020] 73 GSTR 267 (P&H) ; [2019-TIOL-2519-HC-P&H GST] a number of writ petitions involving identical question have been disposed of by this court, wherein the respondents have been directed to open portal so that assessee may upload TRAN-1 and in case the respondent fails to open portal, petitioners have been permitted to take ITC in monthly return GSTR-3B. Division Bench of Delhi High Court in the case of *SKH Sheet Metals Components* v. *Union of India* [2020] 79 GSTR 7 (Delhi) W. P. (C) No. 13151 of 2019, vide order dated June 16, 2020 has permitted the petitioner to revise TRAN-1 on or before June 30, 2020. The Delhi High Court while passing the aforesaid order has relied upon its recent decision in *Brand Equity Treaties Limited* v. *Union of India* [2020] 77 GSTR 390 (Delhi) ; 2020-TIOL-900-HC-Del-GST wherein court had held that Government cannot adopt different yardsticks while evaluating conduct of the tax-payers and its own conduct, acts and omissions. It would be profitable to extract relevant paragraphs of judgment of the Delhi High Court in *Brand Equity* [2020] 77 GSTR 390 (Delhi) ; 2020-TIOL-900-HC-Del-GST (pages 409-411 in 77 GSTR) :

> "18. In abovenoted circumstances, the arbitrary classification, introduced by way of sub-rule (1A), restricting the benefit only to tax-

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payers whose cases are covered by 'technical difficulties on common portal' subject to recommendations of the GST Council, is arbitrary, vague and unreasonable. What does the phrase 'technical difficulty on the common portal' imply ? There is no definition to this concept and the respondent seems to contend that it should be restricted only to 'technical glitches on the common portal'. We, however, do not concur with this understanding. 'Technical difficulty' is too broad a term and cannot have a narrow interpretation, or application. Further, technical difficulties cannot be restricted only to a difficulty faced by or on the part of the respondent. It would include within its purview any such technical difficulties faced by the taxpayers as well, which could also be a result of the respondent's follies. After all, a completely new system of accounting ; reporting of turnover ; claiming credit of prepaid taxes ; and, payment of taxes was introduced with the implementation of the GST regime. A basket of Central and State taxes were merged into a single tax. New forms were introduced and, as aforesaid, all of them were not even operationalised. Just like the respondents, even the taxpayers required time to adapt to the new systems, which was introduced as a completely online system. Apart from the shortcomings in the system developed by GSTN Ltd., the assessees also faced the challenges posed by low bandwidth and lack of computer knowledge and skill to operate the system. It is very unfair on the part of the respondents, in these circumstances, to expect that the taxpayers should have been fully geared to deal with the new system on day-one, when they themselves were completely ill-prepared, which led to creation of a complete mess. The respondents cannot adopt different standards—one for themselves, and another for the taxpayers. The GST regime heralded the system of seamless input-tax credits. The successful migration to the new system was a formidable and unprecedented task. The fractures in the system, after its launch, became visible as taxpayers started logging in closer to the deadline. They encountered trouble filing the returns. The petitioners who are large and mega corporations—despite the aid of experts in the field, could not collate the humongous data required for submission of the statutory forms. Courts cannot be oblivious to the fact that a large population of this country does not have access to the Internet and the filing of TRAN-1 was entirely shifted to electronic means. The nodal officers often reach to the conclusion that there is no technical glitch as per their GST system laws, as there is no information stored/logged that would indicate that the taxpayers

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attempted to save/submit the filing of form GST TRAN-1. Thus, the phrase 'technical difficulty' is being given a restrictive meaning which is supplied by the GST system logs. Conscious of the circumstances that are prevailing, we feel that taxpayers cannot be robbed of their valuable rights on an unreasonable and unfounded basis of them not having filed TRAN-1 Form within 90 days, when civil rights can be enforced within a period of three years from the date of commencement of limitation under the Limitation Act, 1963.

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

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under any provisions of the Act in terms of the time period for transition. The time-limit prescribed for availing the input-tax credit with respect to the purchase of goods and services made in the pre-GST regime, cannot be discriminatory and unreasonable. There has to be a rationale forthcoming and, in absence thereof, it would be violative of article 14 of the Constitution. Further, we are also of the view that the Cenvat credit which stood accrued and vested is the property of the assessee, and is a constitutional right under article 300A of the Constitution. The same cannot be taken away merely by way of delegated legislation by framing rules, without there being any overarching provision in the GST Act. We have, in our judgment in *A. B. Pal Electricals Pvt. Ltd.* [2020] 77 GSTR 382 (Delhi) emphasized that the credit standing in favour of the assessee is a vested property right under Article 300A of the Constitution and cannot be taken away by prescribing a time-limit for availing the same." (emphasis[1] supplied)

In the above findings, Delhi High Court though has not declared rule 117(1A) ultra vires the Constitution, nonetheless treated as violative of article 14 of Constitution of India being arbitrary, discriminatory and unreasonable.

8 The petitioner has challenged vires of rule 117(1A) of the Rules, however we do not think it appropriate to declare it invalid as we are of the considered opinion that the petitioner is entitled to carry forward Cenvat credit accrued under Central Excise Act, 1944. The respondents have repeatedly extended date to file TRAN-1 where there was technical glitch as per their understanding. Repeated extensions of last date to file TRAN-1 in case of technical glitches as understood by the respondent vindicate claim of the petitioner that denial of unutilized credit to those dealers who are unable to furnish evidence of attempt to upload TRAN-1 would amount to violation of article 14 as well article 300A of the Constitution of India.

9 In view of decision of this court in the case of *Adfert Technologies Pvt. Ltd.* [2020] 73 GSTR 267 (P&H) ; [2019-TIOL-2519-HC-P&H GST] and Delhi High Court in the case of *Brand Equity Treaties Limited* [2020] 77 GSTR 390 (Delhi) present petition deserves to be allowed and accordingly *allowed*. The respondents are directed to permit the petitioner to upload TRAN-1 on or before June 30, 2020 and in case the respondent fails to do so, the petitioner would be at liberty to avail ITC in question in GSTR-3B of July 2020. No doubt, the respondents would be at liberty to verify genuineness of claim(s) made by the petitioner.

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1. Here italicised.

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[2020] 79 GSTR 40 (Karn)

[IN THE KARNATAKA HIGH COURT]

ASIAD PAINTS LIMITED

v.

UNION OF INDIA AND OTHERS

(and other cases)

MRS. S. SUJATHA J.

November 19, 2019.

HF ▸ Assessee

GOODS AND SERVICES TAX—INPUT-TAX CREDIT—TRANSITIONAL PROVISIONS—EXTENSION OF TIME TO FILE FORM TRAN-1—INABILITY OF ASSESSEE TO FILE FORM BEFORE DECEMBER 31, 2019—DIRECTION TO DEPARTMENT TO PERMIT ASSESSEE TO FILE OR REVISE FORM TRAN-1 ELECTRONICALLY OR MANUALLY ON OR BEFORE DECEMBER 31, 2019—CENTRAL GOODS AND SERVICES TAX ACT (12 of 2017), ss. 140, 142, 172—CENTRAL GOODS AND SERVICES TAX RULES, 2017, r. 117(1A).

Rule 117(1A) of the Central Goods and Services Tax Rules, 2017 permits registered persons who could not submit the declaration within the due date on account of technical glitches on the common portal, by a further period not beyond March 31, 2019. The time was extended from time to time now up to December 31, 2019 by virtue of the amendment to sub-rule (1A) of rule 117 by Notification No. 49/2019/Central Tax dated October 9, 2019. Thus, it is clear that if any technical glitches are found on the common portal of Department, assessees are permitted to submit the declaration in TRAN-1 up to December 31, 2019 whereas the extension of time prescribed originally under rule 117 is not extended, if any technical glitch arises on the error committed by assessees.

In the light of section 140 of the Central Goods and Services Tax Act, 2017 read with sections 142 and 172 as well as rule 117(1A) of the Act, it is clear that though there is no explicit provision permitting revision filing of TRAN-1 within an extended period for assessees who fail to furnish the material for having filed it by December 27, 2017, in the absence of any specific time prescribed under section 140 of the Act and in terms of introduction of rules 117(1A) and 120A, the legitimate rights of assessees to carry forward unutilized credit of duty or tax already paid cannot be denied on technicalities, i.e., on the ground of limitation in the absence of law. Even in terms of section 172 any suitable order can be passed within a period of three years if any difficulty

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arises in giving effect to any provisions of the Act for the purpose of removing the difficulty.

On a writ petition for a direction to the Department to permit filing of declaration in form TRAN-1 either electronically or manually extending the time-limit prescribed under rule 117 of the Central Goods and Services Tax Rules, 2017 read with section 140 of the Central Goods and Services Tax Act, 2017 to carry forward unutilised credit of duty under the Finance Act, 1994 and the Karnataka Value Added Tax Act, 2003 :

Held accordingly, *that the request of the petitioner to extend the time prescribed under rule 117 could not be denied. The Department was to permit the petitioner to file or revise the TRAN-1 either electronically or manually on or before December 31, 2019. However, the Department was at liberty to verify the genuineness on the merits of the claim of the petitioner in accordance with law.*

KRISH AUTOMOTORS PRIVATE LIMITED *v.* UNION OF INDIA [2019] 71 GSTR 386 (Delhi) *and* ADFERT TECHNOLOGIES PVT. LTD. *v.* UNION OF INDIA [2020] 73 GSTR 267 (P&H) *followed.*

Cases referred to :

Adfert Technologies Pvt. Ltd. *v.* Union of India [2020] 73 GSTR 267 (P&H) (paras 3, 6)

Ajay Hasia *v.* Khalid Mujib Sehravardi [1981] AIR 1981 SC 487 (para 6)

Bannari Amman Sugars Ltd. *v.* Commercial Tax Officer [2005] 139 STC 86 (SC) (para 6)

Bhargava Motors *v.* Union of India [2019] 66 GSTR 114 (Delhi) (para 3)

Blue Bird Pure Pvt. Ltd. *v.* Union of India [2019] 68 GSTR 340 (Delhi) (para 3)

Chogori India Retail Limited. *v.* Union of India [2019] 29 GSTL 602 (Del) (para 3)

Indsur Global Ltd. *v.* Union of India [2015] 33 GSTR 103 (Guj) (para 6)

Krish Automotors Private Limited *v.* Union of India [2019] 71 GSTR 386 (Delhi) (para 5)

Maneka Gandhi *v.* Union of India [1978] 2 SCR 621 ; AIR 1978 SC 597 (para 6)

MRF Ltd. *v.* Assistant Commissioner (Assessment) Sales Tax [2006] 148 STC 225 (SC) (para 6)

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Ramana Dayaram Shetty *v.* International Airport Authority [1979] 3 SCR 1014 ; [1979] AIR 1979 SC 1628 (para 6)

Royappa (E. P.) *v.* State of Tamil Nadu [1974] 2 SCR 348 ; AIR 1974 SC 555 (para 6)

Siddharth Enterprises *v.* Nodal Officer [2019] 71 GSTR 346 (Guj) (para 6)

Union of India *v.* Hindustan Development Corporation [1994] AIR 1994 SC 988 (para 6)

Writ Petition No. 33290 of 2019 connected with W. P. Nos. 15236, 27590, 29138-29141, 33564 and 39692 of 2018, 24302, 26410, 33289, 41874, 49714 and 50294 of 2019 (T-RES).

G. Shivadass Senior Counsel with *Rishab. J, Prashanth Shivadass, Atul Krishna Rao Alur, Ravi Raghvan, Ms. Manasi Khare, Syed M. Peeran* for *Sri/Smt. Lakshmi Kumaran, Raghuraman. V., H. Y. Raju* for *Hanjer Raghavendra, Venkatesh Kumar S., K. Mallaha Rao* and *Hari Prasad M. S.* for the petitioners.

Vikram Aditya Huilgol, High Court Government Pleader, *K. M. Shivayogiswamy*, Central Government Standing Counsel, *T. K. Vedamurthy*, Additional Government Advocate, *Jeevan J. Neeralgi* and *C. Shashikantha* for the respondents.

ORDER

1 MRS. S. SUJATHA J.—Since common and akin issues are involved in these matters, the same are heard together and disposed of, by this common order.

2 The petitioners, registered dealers under the Central Goods and Services Tax Act, 2017 ("the Act", for short) are seeking direction to the respondents to permit them to file TRAN-1 statutory form either electronically or manually extending the time-limit prescribed under rule 117 read with section 140 of the CGST Act, 2017 to carry forward unutilized credit of duty to the common portal paid under the Finance Act, 1994/VAT Act, 2003.

3 The learned senior counsel Sri G. Shivadass representing the petitioners would submit that the very subject-matter has been elaborately considered by the honourable High Courts of Delhi, Punjab and Haryana as well as Kerala and a decision has been rendered directing the respondent-authorities to permit the registered dealers to file or revise TRAN-1 already filed either electronically or manually, thereby prescribing the cut of date, extending the date prescribed under rule 117, reserving liberty to the respondents to verify the genuineness of the claims made by the registered dealers on merits of the case. Reliance is placed on the following judgments :

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(1) *Bhargava Motors* v. *Union of India* [2019] 66 GSTR 114 (Delhi) ; [2019-VIL-218-DEL]

(2) *Blue Bird Pure Pvt. Ltd.* v. *Union of India* [2019] 68 GSTR 340 (Delhi) ; [2019-VIL-347-DEL]

(3) *Chogori India Retail Limited* v. *Union of India* [2019] 29 GSTL 602 (Del.)

(4) *Adfert Technologies Pvt. Ltd.* v. *Union of India* [2020] 73 GSTR 267 (P&H) ; [2019-VIL-547-P&H]

4 The learned High Court Government Pleader appearing for the Revenue submits that in terms of the circular dated April 3, 2018 issued by the Government of India, input tax grievance redressal mechanism has been set up whereby nodal officers have been appointed to redress the grievances of the registered dealers in filing the TRAN 1/TRAN-2. By virtue of the rule 117(1A) inserted with effect from September 10, 2018 vide Notification No. 48/2018, the Commissioner may, on the recommendations of the council extend the date for submitting the declaration in TRAN-1 by a further period on account of technical difficulties on the common portal. Revised TRAN-1 has to be filed on account of any error committed by the registered persons under rule 120A of the Rules which contemplates for revision of declaration in Form GST TRAN-1. Hence, no reliance can be placed on rule 117(1A), to permit the petitioners to file or revise the TRAN-1/TRAN-2 beyond the statutory period prescribed, which otherwise would be causing violence to the language employed in the statue.

5 Having considered the submissions of the learned counsel appearing for the parties and perusing materials on record, it is not in dispute that rule 117(1A) permits the registered persons who could not submit the declaration within the due date on account of technical glitches on the common portal, by a further period not beyond March 31, 2019. Though under rule 117 of the CGST Rules, 2017, period of 90 days from appointed day, i. e., July 1, 2017 was prescribed, the same has been extended from time to time now up to December 31, 2019 by virtue of the amendment to sub-rule (1A) of rule 117 vide Notification No. 49/2019/Central Tax dated October 9, 2019. Thus, it is clear that if any technical glitches are found on the common portal of Department, the registered persons are permitted to submit the declaration in TRAN-1 up to December 31, 2019 whereas the said extension of time prescribed originally under rule 117 is not extended, if any technical glitch arises on the error committed by the registered persons. Considering these aspects in the light of section 140 of the prevailing Rules, the honourable Delhi High Court in *Krish Automotors*

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Private Limited v. *Union of India* [2019] 71 GSTR 386 (Delhi) has observed as under (pages 390 and 391 in 71 GSTR) :

> "Accordingly, a direction is issued to the respondents to permit the petitioner to either submit the TRAN-1 form electronically by opening the electronic portal for that purpose or allow the petitioner to tender said form manually on or before October 15, 2019 and thereafter, process the petitioner's claim for ITC in accordance with law. The petition is disposed of in the above terms."

6 Similarly the honourable High Court of Punjab and Haryana in the case of *Adfert Technologies Pvt. Ltd.* v. *Union of India* [2020] 73 GSTR 267 (P&H) as held thus (pages 286-294 in 73 GSTR) :

> "9. Having scrutinized record of the case(s) and heard arguments of both sides, we find that on the introduction of GST regime, Government granted opportunity to registered persons to carry forward unutilized credit of duties/taxes paid under different erstwhile taxing statues. GST is an electronic based tax regime and most of people of India are not well conversant with electronic mechanism. Most of us are not able to load simple forms electronically whereas there were a number of steps and columns in TRAN-1 forms thus possibility of mistake cannot be ruled out. Various reasons assigned by the petitioners seem to be plausible and we find ourselves in consonance with the argument of the petitioners that unutilized credit arising on account of duty/tax paid under erstwhile Acts is vested right which cannot be taken away on procedural or technical grounds. The petitioners who were registered under the Central Excise Act or VAT Act must be filing their returns and it is one of the requirements of section 140 of the CGST Act, 2017 to carry forward unutilized credit. The respondent authorities were having complete record of already registered persons and at present they are free to verify fact and figures of any petitioner thus inspite of being aware of complete facts and figures, the respondent cannot deprive the petitioners from their valuable right of credit.
>
> 10. During the course of arguments, counsel for the petitioners submitted various judgments and we find that a Division Bench of the Gujarat High Court in the case of *Siddharth Enterprises* v. *Nodal Officer* [2019] 71 GSTR 346 (Guj) ; 2019-TIOL-2068-HC-AHM-GST has dealt with issue involved at length. It has been held that denial of credit of tax/duty paid under existing Acts would amount to violation of articles 14 and 300A of the Constitution of India. Unutilized credit has been recognized as vested right and property in terms of

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article 300A of the Constitution of India. We deem it appropriate to reproduce relevant extracts as below (pages 380-386 in 71 GSTR) :

'33. In our opinion, it is arbitrary, irrational and unreasonable to discriminate in terms of the time-limit to allow the availment of the input-tax credit with respect to the purchase of goods and services made in the pre-GST regime and post-GST regime and, therefore, it is violative of article 14 of the Constitution.

34. Section 16 of the CGST Act allows the entitlement to take input-tax credit in respect of the post-GST purchase of goods or services within return to be filed under section 39 for the month of September following the end of financial year to such purchase or furnishing of the relevant annual return, whichever is earlier. Whereas, rule 117 allows time-limit only up to December 27, 2017 to claim transitional credit on pre-GST purchases. Therefore, it is arbitrary and unreasonable to discriminate in terms of the time-limit to allow the availment of the input-tax credit with respect to the purchase of goods and services made in pre-GST regime and post-GST regime. This discrimination does not have any rationale and, therefore, it is violative of article 14 of the Constitution.

35. The Supreme Court, in the case of *Ajay Hasia* v. *Khalid Mujib Sehravardi* reported in AIR 1981 SC 487, has held that article 14 strikes at the arbitrariness because any action that is arbitrary, must necessarily involve negation of equality. It is sufficient to state that the content and reach of article 14 must not be confused with the doctrine of classification. The doctrine of classification which is evolved by the courts is not para-phrase of article 14 nor is it the objective and end of that article. Wherever there is arbitrariness in the State action, whether it be of the Legislature or of the executive or of an "authority" under article 12, article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution. We may quote the relevant paragraphs 16 and 17 of the judgment thus :

"16. If the society is an 'authority' and therefore 'State' within the meaning of article 12, it must follow that it is subject to the constitutional obligation under article 14. The true scope and ambit of article 14 has been the subject-matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state that the content and reach of article 14 must not be confused

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with the doctrine of classification. Unfortunately, in the early stages of the evolution of our constitutional law, article 14 came to be identified with the doctrine of classification because the view taken was that that article forbids discrimination and there would be no discrimination where the classification making the differentia fulfils two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group ; and (ii) that that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action. It was for the first time in *E. P. Royappa* v. *State of Tamil Nadu* [1974] 2 SCR 348 ; AIR 1974 SC 555, that this court laid bare a new dimension of article 14 and pointed out that that article has highly activist magnitude and it embodies a guarantee against arbitrariness. This court speaking through one of us (Bhatgwati, J.) said :

'The basic principle which therefore informs both articles 14 and 16 is equality and inhibition against discrimination. Now what is the content and reach of this great equalising principle ? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies ; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of article 14, and if it affects any matter relating to public employment, it is also violative of article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.'

17. This vital and dynamic aspect which was till then lying latent and submerged in the few simple but pregnant words of article 14 was explored and brought to light in *Royappa's* case [1974] 2 SCR 348 ; [1974] AIR 1974 SC 555 and it was reaffirmed and elaborated by this court in *Maneka Gandhi* v. *Union of India* [1978] 2 SCR 621 ; AIR 1978 SC 597, where this court again speaking through one of us (Bhagwati, J.) observed :

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'Now the question immediately arises as to what is the requirement of article 14 : what is the content and reach of the great equalizing principle enunciated in this article. There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. . . Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades article 14 like a brooding omnipresence.'

This was again reiterated by this court in *International Airport Authority's* case [1979] 3 SCR 1014 (at p. 1042) ; AIR 1979 SC 1628 of the report. It must therefore now be taken to be well-settled that what article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the courts is not paraphrase of article 14 nor is it the objective and end of that article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under article 14 would be breached. Wherever therefore there is arbitrariness in State action whether it be of the Legislature or of the executive or of an 'authority' under article 12, article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution."

36. It is legitimate for a going concern to expect that it will be allowed to carry forward and utilise the Cenvat credit after satisfying all the conditions as mentioned in the Central excise law and, therefore, disallowing such vested right is offensive against article 14 of the Constitution as it goes against the essence of doctrine of legitimate expectation.

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37. The Supreme Court, in the case of *MRF Ltd.* v. *Assistant Commissioner (Assessment) Sales Tax* reported in [2006] 148 STC 225 (SC) ; [2006] 206 ELT 6 (SC) ; 2006-TIOL-124-SC-CT, has held that a person may have a "legitimate expectation" of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The doctrine of legitimate expectation has an important place in developing law of judicial review. We may quote the relevant paragraph 38 of the judgment thus (para 39, pages 247 and 248 in 148 STC) :

"38. The principle underlying legitimate expectation which is based on article 14 and the rule of fairness has been restated by this court in *Bannari Amman Sugars Ltd.* v. *Commercial Tax Officer* [2005] 139 STC 86 (SC) ; [2005] 1 SCC 625. It was observed in paras 8 and 9 :

'8. A person may have a "legitimate expectation" of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The doctrine of legitimate expectation has an important place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the court to apply for judicial review. It is generally agreed that "legitimate expectation" gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then the decision-maker should justify the denial of such expectation by showing some overriding public

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interest. (See *Union of India* v. *Hindustan Development Corporation*, AIR 1994 SC 988)

9. While the discretion to change the policy in exercise of the executive power, when not trammeled by any statute or rule is wide enough, what is imperative and implicit in terms of article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness'."

38. By not allowing the right to carry forward the CENVAT credit for not being able to file the form GST Tran-1 within the due date may severely dent the writ applicants working capital and may diminish their ability to continue with the business. Such action violates the mandate of article 19(1)(g) of the Constitution of India.

39. This High Court, in the case of *Indsur Global Ltd.* v. *Union of India* reported in [2015] 33 GSTR 103 (Guj) ; [2014] 310 ELT 833 (Guj) ; 2014-TIOL-2115-HC-AHM-CX, has held as under (page 129 in 33 GSTR) :

"34. By no stretch of imagination, the restriction imposed under sub-rule (3A) of rule 8 to the extend it requires a defaulter irrespective of its extent, nature and reason for the default to pay the excise duty without availing Cenvat credit to his account can be stated to be a reasonable restriction. It leads to a situation so harsh and a position so unenviable that it would be virtually impossible for an assessee who is trapped in the whirlpool to get out of his financial difficulties. This is quite apart from being wholly reasonable, being irrational and arbitrary and therefore, violative of article 14 of the Constitution. It prevents him from availing credit of duty already paid by him. It also

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is a serious affront to his right to carry on his trade or business guaranteed under article 19(1)(g) of the Constitution. On both the counts, therefore, that portion of sub-rule (3A) of rule must fail."

40. The liability to pay GST on sale of stock carried forward from the previous tax regime without corresponding input-tax credit would lead to double taxation on the same subject-matter and, therefore, it is arbitrary and irrational.

41. C. B. E. & C. Flyer No. 20, dated January 1, 2018 had clarified as under :

"(c) Credit on duty paid stock : A registered taxable person. other than manufacturer or service provider, may have a duty paid goods in his stock on July 1, 2017. GST would be payable on all supplies of goods or services made after the appointed day. It is not the intention of the Government to collect tax twice on the same goods. Hence, in such cases, it has been provided that the credit of the duty/tax paid earlier would be admissible as credit."

42. Article 300A provides that no person shall be deprived of property saved by authority of law. While right to the property is no longer a fundamental right but it is still a constitutional right. Cenvat credit earned under the erstwhile Central excise law is the property of the writ applicants and it cannot be appropriated for merely failing to file a declaration in the absence of law in this respect. It could have been appropriated by the Government by providing for the same in the CGST Act but it cannot be taken away by virtue of merely framing Rules in this regard.

43. In the result, all the four writ-applications succeed and are hereby allowed. The respondents are directed to permit the writ applicants to allow filing of declaration in form GST TRAN-1 and GST TRAN-2 so as to enable them to claim transitional credit of the eligible duties in respect of the inputs held in stock on the appointed day in terms of section 140(3) of the Act. It is further declared that the due date contemplated under rule 117 of the CGST Rules for the purposes of claiming transitional credit is procedural in nature and thus should not be construed as a mandatory provision.'

. . .

Accordingly, we direct the respondents to permit the petitioners to file or revise where already filed incorrect TRAN-1 either electronically or manually statutory form(s) TRAN-1 on or before 30th November 2019. The respondents are at liberty to verify the genuine-

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ness of claim of the petitioners but nobody shall be denied to carry forward legitimate claim of Cenvat/ITC on the ground of non-filing of TRAN-1 by December 27, 2017."

7 In the circumstances, it is obvious that two types of cases would arise for consideration, namely :—

(1) Registered persons who did/could not file TRAN-1 by December 27, 2017 and have no evidence of attempt to load TRAN-1.

(2) Registered persons loaded TRAN-1 by December 27, 2017 but there is some error and they intend to revise already loaded TRAN-1.

8 In the light of section 140 of the Act read with sections 142 and 172 as well as rule 117(1A), it is clear that though there is no explicit provision to permit revision filing of TRAN-1 at an extended period for the registered persons who fail to furnish the material for having filed the same by December 27, 2017, in the absence of any specific time prescribed under section 140 of the Act and in terms of introduction of rules 117(1A) and 120A, the arguments advanced by the learned counsel for the Revenue could not be countenanced. The legitimate rights of the petitioners to carry forward of unutilized credit of duty/tax already paid cannot be denied on technicalities, i. e., on the ground of limitation by framing the Rules in the absence of law in the Act as the GST regime is a new tax regime that too in the transitional period. Even in terms of section 172 any suitable order can be passed within a period of three years if any difficulty arises in giving effect, to any provisions of the Act for the purpose of removing the said difficulty. This court has no reason to differ from the findings of the honourable court referred to above.

9 For the reasons aforesaid, the request of the petitioners to extend the time prescribed under rule 117 cannot be denied.

10 Accordingly, writ petitions are allowed directing the respondents to permit the petitioners to file/revise the TRAN-1 either electronically or manually on or before December 31, 2019.

11 However, the respondents are at liberty to verify the genuineness on the merits of the claim of the petitioners in accordance with law.

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[2020] 79 GSTR 52 (Bom)

[IN THE BOMBAY HIGH COURT]

NELCO LIMITED

v.

UNION OF INDIA AND OTHERS

NITIN JAMDAR and **M. S. KARNIK,** JJ.

March 20, 2020.

HF ▸ Department

GOODS AND SERVICES TAX—INPUT-TAX CREDIT—TRANSITIONAL PROVISIONS—TIME-LIMIT FOR FILING FORM TRAN-1—RULE PRESCRIBING TIME-LIMIT—NOT ULTRA VIRES ACT—RULE TRACEABLE TO POWER CONFERRED UNDER SECTION 164(2)—TIME-LIMIT NEITHER ARBITRARY NOR UNREASONABLE—AVAILMENT OF INPUT-TAX CREDIT NOT A RIGHT BUT A CONCESSION ATTACHED WITH CONDITIONS FOR ITS EXERCISE WITHIN TIME-LIMIT—EXTENSION OF TIME IN CASE OF "TECHNICAL DIFFICULTIES"—NOT DISCRIMINATORY—MEANING OF "TECHNICAL DIFFICULTIES"—NOT TO BE CONSTRUED BROADLY—EXAMINATION OF SYSTEM LOG TO ASCERTAIN EXISTENCE OF TECHNICAL DIFFICULTIES ON COMMON PORTAL NOT ARBITRARY—NO SUCH EVIDENCE IN CASE OF ASSESSEE—NO DIRECTION CAN BE ISSUED—CENTRAL GOODS AND SERVICES TAX ACT (12 of 2017), ss. 140, 164—CENTRAL GOODS AND SERVICES TAX RULES, 2017, r. 117—CONSTITUTION OF INDIA, art. 14.

There is a presumption as to the legality of the statute. This presumption also applies to a subordinate instrument.

Section 140 of the Central Goods and Services Tax Act, 2017 deals with transitional arrangement of input-tax credit. The heading of section 140 is "transitional arrangements for input tax credit". The words used provide a clue to the nature of this provision. The word "arrangement" means action, process, plan. "Transition" means a process or period changing from one state or condition to another[1]*. Thus, the plain language understanding of these two phrases, juxtaposed, is a process of regulating the change from one position to another. This transitionary provision is a unique legislative provision and merits different approach by the courts. Section 140 of the Act and rule 117 of the Central Goods and Services Tax Rules, 2017 fall in that part of the statute which deals with transitionary provisions between two regimes of taxation.*

1. See *Concise Oxford English Dictionary,* 11th Edition, Oxford University Press.

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The amplitude of rule-making power is regulated by and is conditional upon the phraseology of the provision of the Act conferring it. If the provision granting rule-making power is couched in widest terms, the doctrine of ultra vires cannot be casually applied.

Section 164(1) of the Act empowers the Government, on the recommendation of the Goods and Services Tax Council, to make rules for carrying out the provisions of the Act. Sub-section (2) is in extensive terms. It is clear from reading section 164(2), that the Government has the power to make rules not only for the matters already prescribed but those may be prescribed in future or in respect of which provisions are to be made by rules. Thus, section 164 governs the most comprehensive range of rule-making power.

The reason behind granting an extensive range of rule-making power under this Act is the nature of the legislation in question. The goods and services tax law has overhauled the existing multiple tax regimes into a single tax. This a first of its kind in the country. Since the system and the principles under it are new, quick adaption to the peculiar situations that may arise is crucial. It is necessary that the system is dynamic to keep pace with technological and commercial developments. It should be flexible to meet the emerging challenges to the revenue needs on an ongoing basis. It is for this flexibility that the Legislature has conferred an extensive rule-making power. Each dispute relating to limitation of rule-making power will have to be resolved with reference to the language of each provision. The doctrine of ultra vires should not be uniformly applied without examining the terminology of the concerned statute.

SALES TAX OFFICER *v.* ABRAHAM (K. I.) [1967] 20 STC 367 (SC) *distinguished.*

Section 16(4) provides that an assessee shall not be entitled to take input-tax credit regarding any invoice or debit note for supply of goods or services after the due date of furnishing of the return under section 39 for the month of September following the end of the financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier. Thus under the goods and services tax regime, provision for availing of input-tax credit is not without time-limit. Prescribing a time-limit under rule 117 is not contrary to the object of the Act.

The powers conferred by section 164(2) are broad and pervasive and take within its sweep rule 117.

The Cenvat Credit Rules prescribe conditions for availment of that credit. The rights and privileges accrued during the existing law have been saved

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under section 174 of the Act. If, before and after the goods and services tax regime, the availment of input credit is conditional, it cannot be that it is without any limit in the transitional period. With the advent of an entirely new tax regime, the earlier credit could have lapsed, but as and by way of concession it is permitted to be carried forward for a limited time. Thus, going by the scheme of the Act, under section 140(1), the reference to input-tax credit is not by way of a right, but as a concession.

The time-limit in rule 117(1) is traceable to the rule-making power conferred in section 164(2). The credit envisaged under section 140(1) being a concession, it can be regulated by placing a time-limit. Therefore, the time-limit under rule 117(1) is not ultra vires the Act. Since the rule-making power exists for rule 117 and is traceable to section 164, laying the rule before Parliament supports its validity.

When economic legislation is questioned, the courts are slow to strike down a provision which may lead to financial complications.

R. K. GARG *v.* UNION OF INDIA [1982] 133 ITR 239 (SC), BHAVESH D. PARISH *v.* UNION OF INDIA [2000] 5 SCC 471, DIRECTOR GENERAL OF FOREIGN TRADE *v.* KANAK EXPORTS [2016] 2 SCC 226 *and* SWISS RIBBONS P. LTD. *v.* UNION OF INDIA [2019] 213 Comp Cas 198 (SC) ; [2019] 4 SCC 17 *relied on.*

The time-limit in rule 117 is not arbitrary or unreasonable. For an efficient administration of a tax system, certainty, especially in terms of time, is important. Calculations of the tax liability dictated by subjective conditions can lead to uncertainty. Such uncertainty makes it difficult to budget and ensure that funds are allocated where they are most required. The time-limit for availing of input-tax credit in the transitionary provisions is thus rooted in the larger public interest of having certainty in allocation and planning. The time-limit under rule 117 is thus not irrelevant.

Upholding only the right to carry forward the credit and ignoring the time-limit would make the transitional provision unworkable. The credit under the transitional provision is not a right to be exercised in perpetuity. By the very nature of the transitional provision, it has to be for a limited period.

The Statements and Objects of the Act contain no indication that for availing of the input-tax credit in a transitional provision there is no time-limit. Section 16(4) provides a time-limit for availing of the input-tax credit. It cannot be that under the goods and services tax law, there is a time-limit, but for the transitional period, there is no such time-limit. Once under the law for

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future transactions time-limit is stipulated, there is nothing unreasonable in the stipulated time-limit for the transitional period.

The concept of a time-limit under this provision is not casual but has a larger purpose to serve. If relief were to be granted to individual assessees overriding the time-limit on equity, the perception of what is equitable will differ from authority to authority. This would lead to uncertainty. The operation of this complicated tax system will become unworkable. The time-limit placed under the rule being rooted in the need to have certainty in fiscal management, the equity jurisdiction ought not to be exercised.

The contention that insistence on submitting declaration electronically creates a classification between those with needed capabilities and equipment and those who do not and hence is violative of article 14 is not tenable. The entire goods and services tax system, not only section 140 and rule 117 envisages electronic filing. It has an intricate inter-linking regulated by software and data analysis. Numerous Departments and enactments now mandate electronic submission of forms. With the ever-expanding sweep of digital data pervading almost all walks of life, it will be a retrograde step to declare a provision unreasonable because it mandates electronic compliance, especially when the enactment in question is an intricate tax regime powered by a software-based system.

The extension of time for submitting the declaration electronically in form TRAN-1 under rule 117(1A) applies to the submission of TRAN-1 to be made electronically. It applies only to those registered persons who could not submit their declaration by the due date under rule 117(1) because of technical difficulties. The technical difficulties have to be those referable to the common portal of the Goods and Services Tax Department, and in whose cases the Council has made a recommendation for an extension. The Council is not a body to resolve technical issues. Therefore, an Information Technology Grievance Redressal Committee was developed by the Council. Based on the report of this Technical Committee, a further recommendation would be made. Therefore, there is no merit in the contention that the power could not have been delegated to the Information Technology Grievance Redressal Committee. Rule 117(1A) refers to technical difficulties in online submission of TRAN-1 form on the common portal. These technical difficulties are not those faced in general but on the common portal of the Goods and Services Tax Network. The phrase "technical difficulty" cannot be broadly construed.

The Information Technology Grievance Redressal Cell has taken the system log on the common portal as evidence of attempts made. Since rule 117(1A) refers only to technical difficulties on the common portal, the record

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on the common portal would be a material piece of evidence. Since the phrase "technical difficulty" does not envisage any other difficulties, the Information Technology Grievance Redressal Committee rightly evolved the criteria of system logs. The system log is an auto-generated data which records the activities performed. A system log maintained by the portal shows details of requests made at the page. This data is not manually collected but auto-generated. From the system log, it can be ascertained whether an attempt was made to access the data. Therefore, not only is there nothing arbitrary in insisting on a system log but it is a correct criterion to be adopted.

Insisting on system log as proof from the very system which has technical difficulties, is neither arbitrary nor unworkable. Nor does the categorization based on system log amount to a fettering of discretion. The categorization made by the cell involves rules of evidence to determine whether a registered user encountered difficulties while submitting forms on the common portal. It is only if the registered user encountered technical difficulties on the common portal, that rule 117(1A) comes into play.

The input-tax credit in the transitional provision is a concession to be utilised in a time-bound manner, and further extension is given if the Council finds that there was a technical difficulty at its end. If there is no technical difficulty on the common portal for the registered user, this additional concession is not extended. Whether to grant further concession as rule 117(1A) will be determined from examination of the system logs from the portal. Exercise of equity jurisdiction in some cases and not in other cases would cause an anomalous situation, particularly when a time-limit has been placed in a taxing statute for achieving certainty and finality.

The assessee supplied and undertook various network-related services. The petitioner had accumulated Cenvat credit during its activities and payment of taxes. According to the assessee, the assessee attempted to file TRAN-1 form on December 27, 2017. However, it could not file the form, as there were problems on the common portal run of the Goods and Services Tax Network. The assessee sent an e-mail to the official complaint portal of the Department, and the assessee received no response. When the assessee tried again to file TRAN-1 on December 28, 2017, it did not permit an option for filing form TRAN-1. Another email was sent by the assessee on January 12, 2018 to resolve the technical difficulties but the assessee received no response. A last communication made by the assessee on April 23, 2018 requesting the Department to permit filing TRAN-1 form was not answered and there was no option of manually filing form TRAN-1. On a writ petition :

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Held, *dismissing the petition, that no details of technical difficulties were stated in the assessee's representations e-mailed nor was any proof provided. The case of the assessee was discussed by the Information Technology Grievance Redressal Cell in its meeting on August 27, 2018 and according to the system log, no evidence was available. The decision was communicated to the assessee on July 10, 2018. The assessee produced a screen-shot of the browsing history extracted from the laptop of one of its employees which revealed that the portal was accessed on December 27, 2017. The history was extracted in March, 2019 and there was a possibility that it might not contain full details and also there might not be a complete list of browsing history. The assessee's contention that based on the browsing history now produced by way of rejoinder, the fact that the assessee attempted and encountered technical difficulties should be accepted, was not tenable. The system log was an unquestionable criterion for ascertaining the activity on the portal. The system log on the common portal did not support the case of the assessee. This had been communicated to the assessee. No direction thus could be issued to the Department now to treat the case of the assessee as falling within the ambit of rule 117(1A).*

JCB INDIA LIMITED *v.* UNION OF INDIA [2018] 53 GSTR 197 (Bom) *and* WILLOWOOD CHEMICALS PVT. LTD. *v.* UNION OF INDIA [2018] 58 GSTR 310 (Guj) *followed*.

COLLECTOR OF CENTRAL EXCISE *v.* DAI ICHI KARKARIA LTD. [1999] 112 ELT 353 (SC) *distinguished.*

Cases referred to :

Aadinath Industries *v.* Union of India [2020] 72 GSTR 247 (Delhi) (para 57)

Acraman *v.* Herniman 117 E. R. 1164 (para 25)

Adfert Technologies Pvt. Ltd. *v.* Union of India [2020] 73 GSTR 267 (P&H) (para 57)

Asiad Paints Limited *v.* Union of India [2020] 79 GSTR 40 (Karn) (para 57)

Babu (A. F.) *v.* Union of India [2020] 78 GSTR 426 (Ker) (para 57)

Bharat Barrel and Drum Mfg. Co. Ltd. *v.* Employees State Insurance Corporation [1971] 2 SCC 860 (paras 22, 37)

Bhargava Motors *v.* Union of India [2019] 66 GSTR 114 (Delhi) (para 57)

Bhavesh D. Parish *v.* Union of India [2000] 5 SCC 471 (para 51)

Blue Bird Pure Pvt. Ltd. *v.* Union of India [2019] 68 GSTR 340 (Delhi) (para 57)

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Collector of Central Excise *v.* Dai Ichi Karkaria Ltd. [1999] 112 ELT 353 (SC) (para 42)

Commissioner of Income-tax *v.* Shri Krishen Chand Charitable Trust [1975] 98 ITR 387 (J&K) (para 22)

Commissioner of Income-tax *v.* Trustees of Shri Teckchand Chandiram Trust [1990] 184 ITR 537 (Bom) (para 22)

Director General of Foreign Trade *v.* Kanak Exports [2016] 2 SCC 226 (para 51)

Eicher Motors Ltd. *v.* Union of India [1999] 106 ELT 3 (SC) (paras 40, 50)

Garg (R. K.) *v.* Union of India [1982] 133 ITR 239 (SC) (para 51)

Gillette India Limited *v.* Union of India [2020] VIL-01-DEL (para 57)

Global Sugar Ltd. *v.* Commissioner of Central Excise [2016] 334 ELT 604 (All) (para 55)

Godrej & Boyce Mfg. Co. Pvt. Ltd. *v.* Commissioner of Sales Tax [1992] 87 STC 186 (SC) (para 39)

Hospira Health Care India Pvt. Ltd. *v.* Development Commissioner [2016] 92 VST 513 (Mad) (para 55)

Hukam Chand *v.* Union of India [1972] 2 SCC 601 (para 48)

Jakap Metind Pvt. Ltd. *v.* Union of India [2020] 76 GSTR 220 (Guj) (para 57)

Jay Bee Industries *v.* Union of India [2020] 74 GSTR 295 (HP) (para 57)

Jayam & Co. *v.* Assistant Commissioner [2016] 96 VST 1 (SC) (paras 39, 40)

JCB India Limited *v.* Union of India [2018] 53 GSTR 197 (Bom) (para 38, 40, 41, 52)

JSW Dharmatar Port Pvt. Ltd. *v.* Union of India [2019] 20 GSTL 721 (Bom) (para 38)

Osram Surya (P) Ltd. *v.* Commissioner of Central Excise [2002] 142 ELT 5 (SC) (paras 40, 50)

Ra Export Siddhartha Enterprise, Triveni Needdles Pvt. Ltd. *v.* Union of India 2019-VIL-618-DEL (para 57)

Sales Tax Officer *v.* Abraham (K. I.) [1967] 20 STC 367 (SC) (paras 22, 24, 25, 34)

Sambhaji *v.* Gangabai [2009] 240 ELT 161 (SC) (para 55)

Samtel India Ltd. *v.* Commissioner of Central Excise [2003] 155 ELT 14 (SC) (para 40)

Second Income-tax Officer *v.* M. C. T. Trust [1976] 102 ITR 138 (Mad) (para 22)

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Siddharth Enterprises *v.* Nodal Officer [2019] 71 GSTR 346 (Guj) (para 57)

Solar Works *v.* Employees State Insurance Corporation [1964] AIR 1964 Mad 376 (para 22)

State of Gujarat *v.* Reliance Industries Limited [2018] 50 GSTR 14 (SC) (para 39)

Swiss Ribbons P. Ltd. *v.* Union of India [2019] 213 Comp Cas 198 (SC) (para 51)

Tara Exports *v.* Union of India [2018] 58 GSTR 46 (Mad) (para 57)

Willowood Chemicals Pvt. Ltd. *v.* Union of India [2018] 58 GSTR 310 (Guj) (paras 24, 38, 39, 41, 52, 57)

Writ Petition No. 6998 of 2018.

V. Sridharan, Senior Advocate along with *Prakash Shah* and *Sriram Sridharan* instructed by *PDS Legal* for the petitioner.

Anil Singh, Additional Solicitor General along with *Pradeep S. Jetly*, Senior Advocate along with *J. B. Mishra* for respondents Nos. 1, 2, 4, 6 and 7

Ms. Shruti D. Vyas, "B" Panel Counsel, for respondent No. 3.

JUDGMENT

The judgment of the court was delivered by

1 NITIN JAMDAR J.—Rule. Rule made returnable forthwith. Respondents waive service. Taken up for final disposal.

2 The petitioner—Nelco Limited is a company incorporated under the Companies Act. It supplies and undertakes various network related services. Respondent No. 1 is the Union of India. Respondent No. 2 is the Central Board of Indirect Taxes. Respondent No. 3 is the State of Maharashtra. Respondent No. 4 is the Goods and Services Tax Council. Respondent No. 5 is an officer exercising powers under the Maharashtra Goods and Services Tax Act, 2017. Respondent No. 6 is a company which operates the online portal known as GSTN. Respondent No. 7 is the assessing officer having jurisdiction over the petitioner.

3 The Goods and Services Tax Act was brought into force from July 1, 2017. This tax replaced and subsumed various indirect taxes in India. For the transition between the old and new regimes, provisions have been made under the Act. Goods and Services Tax Act provides for utilization of input-tax credit accumulated under the earlier tax laws upon certain conditions. The Goods and Services Tax Rules framed under the Act provide for filing of a form known as GST TRAN-1 for availing of such input-tax credit.

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The Rules provide for a time-limit within which the TRAN-1 Form has to be filed. This time-limit is the subject of debate in this petition.

4 Goods and services tax is levied on the supply of goods and services. It is a destination-based consumption tax. The GST has introduced a unique concept where both, the Central and the State, levy taxes on a joint base. The GST levied by the State Governments is called a State GST, in short, "the SGST". GST levied by the Central Government is called a Central GST, that is "the CGST". Regarding inter-State supply, the levy is called Integrated GST, "the IGST". The GST has replaced various taxes collected by the Central and the State. CGST has subsumed Central excise duty, additional excise duty, service tax, additional customs duty, special additional duty of customs, excise duty on medicinal and toilet preparations. SGST has subsumed sales tax, value added tax, entertainment tax, Central sales tax, octroi and entry tax, purchase tax, luxury tax, taxes on lottery, betting and gambling. A Goods and Services Tax Council is established. The Council comprises of the Union Finance Minister, the Union Minister of State, Minister nominated by each State Government. Out of several functions of the GST Council, one of them is the resolution of disputes.

5 The timeline of the statutory enactment as follows. On June 19, 2017 the Central Goods and Services Tax Rules, 2017 were notified. Rule 117 was introduced on June 28, 2017 into the CGST Rules with effect from July 1, 2017 to provide that every registered person may file TRAN-1 Form within 90 days of July 1, 2017. Rule 117(1) proviso stipulated that the Commissioner may on the recommendations of the GST Council extend this period by a further 90 days. GST regime was implemented in the country from July 1, 2017 with the enactment of the Central Goods and Services Tax Act, 2017 along with the allied Central GST Acts and the State GST Acts. Rule 120A was introduced on September 15, 2017 in the CGST Rules with effect from September 15, 2017 providing for a one-time revision of TRAN-1 Form within the same time prescribed in rule 117. Time was extended for revising and filing TRAN-1 Form to October 31, 2017. On October 28, 2017, this was further extended to November 30, 2017. On November 10, 2017 a press release issued stating that the time of filing/revising Form TRAN-1 had been extended till December 31, 2017, however on November 15, 2017, the time-limit was extended only to December 27, 2017. On April 3, 2018 by a circular was issued by the CBEC on the directions of the GST Council an IT Grievance Redressal Mechanism was enacted. On September 10, 2018 rule 117(1A) inserted into the CGST Rules providing the extension of the time for filing TRAN-1 Form for persons who faced technical difficulties in filing the TRAN-1 Form. Further, under rule 117(1A)

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time for filing TRAN-1 Form was extended till January 31, 2019 for persons facing technical difficulties. With further extensions now it is extended to March 31, 2020 for the persons specified in rule 117(1A).

6 Reverting to the facts of this case. The petitioner had accumulated Cenvat credit during its activities and payment of taxes. According to the petitioner, the petitioner attempted to file TRAN-1 Form on December 27, 2017. However, it could not file the same, as according to the petitioner, there were problems on the common portal run of respondent No. 6. It is the petitioner's case that the petitioner sent an e-mail to the official complaint portal of the respondents for GST related issues, and the petitioner received no response. Further, it is the case of the petitioner that when the petitioner tried again to file TRAN-1 Form on December 28, 2017, it did not permit an option for filing of the TRAN-1 Form. Another email was sent by the petitioner on January 12, 2018 to resolve the technical difficulties but the petitioner which received no response. It is the case of the petitioner that the Deputy Commissioner (Anti-Evasion) and Superintendent (Anti-Evasion) of Central Goods and Services Tax Authority visited the petitioner's premises on March 28, 2018 regarding GSTR-3B ; however, they did not remedy the grievance of the petitioner regarding TRAN-1 Form.

7 According to the petitioner, the petitioner is entitled to avail Cenvat credit, details of which are given in the petition, under section 140 of the Central Goods and Services Tax Act and the Maharashtra Goods and Services Tax Act. It is the grievance of the petitioner that last communication made by the petitioner on April 23, 2018 requesting the respondents to permit filing TRAN-1 Form has not been answered and there is no option of manually filing the TRAN-1 Form, and the petitioner is in danger of losing the Cenvat credit accrued, the petitioner is constrained to file this petition.

8 The petitioner has challenged the rule 117 of the Central Goods and Services Tax Rules, 2017 as ultra vires sections 140(1), 140(2), 140(3) and 140(5) of the Central Goods and Services Tax Act, 2017 to the extent that it prescribes a time-limit for filing of TRAN-1 Form. Consequently, the validity of CBEC's Orders dated September 21, 2017, October 28, 2017 and November 15, 2017 issued under rule 117 of the CGST Rules are challenged. The petitioner has further sought for a direction to the respondents to permit the filing of TRAN-1 Form.

9 The respondents have filed reply affidavit and have supported the impugned enactment, and have opposed the relief sought for. As regards the petitioner's case of the petitioner making a bona fide attempt to file the

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GST TRAN-1, reply affidavit has been filed by the Commissioner of Central Goods and Services Tax and Central Board of Excise and Customs. It is stated that the petitioner did not specify the nature of technical difficulties, produced no proof of having been encountered technical difficulties and the e-mail on December 27, 2017 was sent on 17.53 hours. Since no proof was produced that the petitioner made any bona fide attempt and encountered technical difficulties, the petitioner cannot be held to be a person facing technical difficulties to give the benefit of the extended period. The case of the petitioner was examined based on the system log of the portal, and it is clear that the petitioner had encountered no technical difficulties and no evidence of error was found on the system log.

10 The petitioner has filed an affidavit in rejoinder stating that the petitioner made various follow up attempt by forwarding scanned copies of the letter dated April 23, 2018 to the jurisdictional officer and met the officers to resolve the issue. The petitioner has asserted in the rejoinder that the petitioner encountered the technical difficulties in submitting TRAN-1 Form on December 27, 2017 due to technical difficulties on GSTN common portal. The petitioner contends that once the respondents admit there is an IT-related difficulty on the common portal, then it cannot ask the petitioner to produce the proof thereof.

11 The petitioner, by an additional affidavit dated March 13, 2019 has sought to produce a screen shot of the browsing history from the laptop of its officer to demonstrate that bona fide attempt was made to file the TRAN-1 Form. It is also stated that history was extracted in March, 2019, and the extracted history may not contain full details.

12 We have heard Mr. V. Sridharan, learned senior advocate along with Mr. Prakash Shah and Mr. Sriram Sridharan, learned advocates for the petitioner and Mr. Anil Singh, the learned Additional Solicitor General along with Mr. Pradeep Jetly, learned senior advocate and Mr. J. B. Mishra, learned advocate for respondent Nos. 1, 2, 4, 6 and 7 and Ms. Shruti Vyas, learned Additional Government Pleader for respondent No. 3.

13 Various petitions have been filed in this court challenging the time-limit stipulated. These petitions are listed together and notified on board. The challenge on the ground of ultra vires and violative of article 14 of the Constitution of India is common in all the petitions. During the hearing of the present petition, we permitted the advocates in other petitions to address on these legal issues and treated the present petition as a lead petition. Accordingly, Mr. Bharat Raichandani, Mr. Ishaan Patkar, Mr. Prithviraj Choudhari and Mr. Chandrakant Thakar, the learned advocates, have

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addressed us. Mr. V. A. Sonpal, the learned advocate, has addressed us for the respondents in some of the petitions.

14 The discussion can be divided under four heads : (i) the challenge to the impugned rule on the ground of it being ultra vires of the parent statute ; (ii) the challenge on the ground of the rule being unreasonable and violative of article 14 of the Constitution on India ; (iii) the meaning of the phrase "technical difficulties" under rule 117(1A) and the role of the IT redressal cell and whether by creating categories discretion is being fettered ; (iv) relief to the petitioner, if any.

15 First, we take the ground of ultra vires. Second, the challenge based on article 14 of the Constitution of India. Third, the aspect of technical difficulties under rule 117(1A) and last, the relief to the present petitioner.

16 In short, the petitioner's contentions on the first aspect are : Rule 117 is ultra vires of section 140 and is not traceable to any provision of the Act. The phrase used in section 140 as "prescribed manner" cannot mean a rule-making power to prescribe the period of limitation. This phrase is judicially construed. The Supreme Court and various High Courts have construed the phrase "prescribed manner" as not to include the power to make rules imposing a time-limit. After the judicial pronouncement, if the Legislature later has used the same phrase, it has to be construed as it is judicially interpreted. There is intrinsic evidence in the Act itself to show that whenever the Legislature wanted to confer rule-making power, specific phraseology is used. Therefore, whenever the Legislature wanted to confer rule-making power to prescribe time-limit, it has been specifically so prescribed. It is a uniform and settled legislative practice to use the phrase "prescribed manner" when the Legislature does not intend to confer rule-making power to provide limitation. The rule-making power to prescribe time-limit cannot be traced to general rule-making power under section 164. Merely because the Rules have been placed before the Parliament does not cure the inherent lack of power. Section 140 prescribes a self-declaration to be confirmed later during the stipulated period and therefore, no prejudice to the respondents. Rule 117 so far as it prescribes time-limit to submit TRAN-1 Form cannot be traced either to section 140 or to section 164 or any other provision of the Act. Therefore, rule 117, to the extent it provides a time-limit, is ultra vires of the parent statute. The input-tax credit has always been a core feature of goods and services tax all over the world and denial of the input-tax credit when the levy is imposed on output strikes at the core. Under the new GST law, every supply is taxable. The GST is applicable on the appointed date, despite the contract entered into. Provisions are made for the automatic transaction to GST to enable

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the collection of GST for output, and there is no choice. Under the scheme of the Act, therefore the input-tax credit for the earlier period has to be given. Filing of the form is necessary only for the procedural formalities, and therefore, filing of return is contemplated. However, the Parliament has given a right to the input-tax credit for the earlier period under section 140(1), and this right cannot be taken away by rules. A right to input-tax credit existed under the old regime and also the same is continued under the new regime.

17 The reply of the respondents, in brief, is as follows. There is a presumption to the legality and validity of subordinate legislation, and the burden is heavy on those who assert its invalidity. Even with subordinate legislation, the court should be slow in concluding invalidity. The input-tax credit, in the transitionary provision under section 140, is a nature of exemption and is not a matter of right. Section 140 is a transitional provision which by very nature is limited by the time duration. The provisions under the Act could have easily taken away the input credit accrued under the earlier regime, but by way of concession, input credit is continued with conditions. As regards the rule-making power, section 164(2) is the general rule-making power. Section 164(2) is couched in most extensive terms, and rule 117 is traceable to this power. The time-limit under rule 117 is not contrary to any provisions of the Act, nor it takes away any substantive right. The judicial pronouncements about the rule-making power and time-limit within the earlier tax regime would not ipso facto apply for interpreting the transitionary provisions. Further, the GST tax regime and the transitionary provisions are unique. For determining the challenge based on lack of rule-making power, the scheme and the Act have to be seen. The Rules once placed before the Parliament and approved cannot be debated upon for their validity. The availment of input-tax credit is regulated by the rules and must be availed within a time period.

18 Rule 117 falls under Chapter XIV of the Goods and Services Tax Rules. Chapter XIV is titled Transitional Provisions. This Chapter contains six rules. Rule 117 deals with a tax or duty credit carried forward on the appointed date. Section 118 is regarding the person to whom section 142(11)(c) applies. Rule 119 is regarding the declaration of stock. Rule 120 deals with details of goods sent on approval basis. Section 120A deals with revision of declaration of TRAN-1 Form. Section 121 is regarding recovery of credit wrongly availed. The part of rule 117 relevant for this discussion is reproduced below :

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"Rule 117 : Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day (Chapter XIV : Transitional Provisions)

(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* . . .

(1A) to (4) . . ." (emphasis[1] supplied)

Rule 117(1), thus, states that the person entitled to take credit of input tax under section 140 would file a declaration electronically in a form known as GST TRAN-1 within 90 days. The period can be extended on the recommendation of the Council for a further period not exceeding 90 days.

19 Before we deal with the challenge to rule 117, two positions must be borne in mind. First, there is a presumption to the legality of the statute. This presumption also applies to a subordinate instrument. Second, both section 140 and rule 117 fall in that part of the statute which deals with transitionary provision between two regimes of taxation. In this context validity of rule 117 has to be examined.

20 The challenge to the time-limit under rule 117, so far as it mandates time-limit, being ultra-vires, it has two parts. First is referring to section 140(1) of the Act and the rule-making power then. Second is based on section 164 of the Act, and the general rule-making power. The petitioner has advanced elaborate submission on how the rule-making power to prescribe time-limit rule 117 does not originate from section 140, since the only phrase used in this regard is "in such manner as may be prescribed". Several decisions have been cited on the proposition that this phrase cannot confer power to prescribe time-limit. The respondents, however, have relied upon section 164 of the Act. Nevertheless, for completeness, we refer to the contentions of the petitioner regarding section 140 and the phraseology used for the rule-making power.

21 Chapter XX of the Act deals with transitionary provisions. Section 139 is of migration of existing taxpayers, which states that from on and from the

1. Here italicised.

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appointed day, every person registered under the existing laws and having a valid permanent account number, would be issued a certificate of registration on a provisional basis. Section 139 states that the conditions of form and manner would be as prescribed. The final certificate and the conditions thereof would be as prescribed. Section 140 deals with the transitional arrangement of input-tax credit. Section 140 of the CGST Act reads :

"140. *Transitional arrangements for input-tax credit.*—(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of Cenvat credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointe day, furnished by him under the existing law in such manner as may be prescribed :

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely :—

(i) where the said amount of credit is not admissible as input-tax credit under this Act ; or

(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date ; or

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed Cenvat credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed :

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as Cenvat credit under the existing law and is also admissible as input-tax credit under this Act.

Explanation.—For the purposes of this sub-section, the expression 'unavailed Cenvat credit' means the amount that remains after subtracting the amount of Cenvat credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of Cenvat credit to which the said person was entitled in respect of the said capital goods under the existing law.

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(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of Notification No. 26/2012-Service Tax, dated June 20, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely :—

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act ;

(ii) the said registered person is eligible for input-tax credit on such inputs under this Act ;

(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs ;

(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day ; and

(v) the supplier of services is not eligible for any abatement under this Act :

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994, but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,—

(a) the amount of Cenvat credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1) ; and

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(b) the amount of Cenvat credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day :

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days :

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely :—

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act ;

(ii) the said registered person is not paying tax under section 10 ;

(iii) the said registered person is eligible for input-tax credit on such inputs under this Act ;

(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs ; and

(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an input service distributor shall be eligible for

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distribution as credit under this Act even if the invoices relating to such services are received on or after the appointed day.

(8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of Cenvat credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed :

Provided that if 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, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier :

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input-tax credit under this Act :

Provided also that such credit may be transferred to any of the registered persons having the same permanent account number for which the centralised registration was obtained under the existing law.

(9) Where any Cenvat credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

(10) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

Explanation 1.—For the purposes of sub-sections (3), (4) and (6), the expression 'eligible duties' means—

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 ;

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 ;

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 ;

(iv) omitted ;

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(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 ;

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 ; and

(vii) the national calamity contingent duty leviable under section 136 of the Finance Act, 2001,

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Explanation 2.—For the purposes of sub-sections (1) and (5), the expression 'eligible duties and taxes' means—

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 ;

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 ;

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 ;

(iv) omitted ;

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 ;

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 ;

(vii) the national calamity contingent duty leviable under section 136 of the Finance Act, 2001 ; and

(viii) the service tax leviable under section 66B of the Finance Act, 1994,

in respect of inputs and input services received on or after the appointed day.

Explanation 3.—For removal of doubts, it is hereby clarified that the expression 'eligible duties and taxes' excludes any cess which has not been specified in *Explanation* 1 or *Explanation* 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975."

Sub-sections (1), (2), (3) and (5) lay down the terms and conditions for transfer of credit from Cenvat credit to input-tax credit. Section 140(1) deals with the return to be filed for transfer of credit under the pre-GST regime. Section 140(2) deals with transferring credit regarding capital goods. Credit of eligible duties on inputs or finished goods or semi-finished goods held in stock on the appointed day and transition is dealt

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with under section 140(3) of the Act. Section 140(5) refers to transferring credit regarding inputs or input services in transit on the appointed day. Section 140 deals with transitional arrangement of input-tax credit, and for the present topic, section 140(1) is material.

22 According to the petitioner, section 140(1) confers right on a registered person to take Cenvat credit of the eligible duties in its electronic trading ledger to be carried forward and the said right can be regulated only in *such manner as may be prescribed*, and thus, regulated by framing Rules. The phrase *as may be prescribed* has been judicially construed as not to include within its ambit the prescription of limitation. On this proposition, reliance is placed on the decision of the Supreme Court in the case of *Sales Tax Officer, Ponkunnam* v. *K. I. Abraham* [1967] 20 STC 367 (SC) ; [1967] 3 SCR 518, *Bharat Barrel and Drum Mfg. Co. Ltd.* v. *Employees State Insurance Corporation* [1971] 2 SCC 860, *Commissioner of Income-tax, Patiala* v. *Shri Krishen Chand Charitable Trust* [1975] 98 ITR 387 (J&K), *Second Income-tax Officer* v. *M. C. T. Trust* [1976] 102 ITR 138 (Mad), *Commissioner of Income-tax* v. *Trustees of Shri Teckchand Chandiram Trust* [1990] 184 ITR 537 (Bom) and the decision of Division Bench of the Madras High Court in *Solar Works* v. *Employees State Insurance Corporation* AIR 1964 Mad 376. A perusal of these decisions does indicate that the phrase "prescribed manner" has been construed not to include within its ambit a rule-making power to prescribe a time-limit. Different phrases have been employed in the Act such as section 37 uses the phrase "within such time", section 38 uses the phrase "within such time" as may be prescribed, sections 25, 28, 29, 30, 32, 37, 38, 40, 43, 49, 50, 52, 53, 53A, 84, 141 also use different phrases regarding time-limit.

23 However, as stated earlier, the primary reliance of the respondents is on section 164, that is the general rule-making power. Section 164 empowers the Government to makes rules on the recommendations of the Council for carrying out the provisions of the Act. Without prejudice to the generality of the provisions, it also confers powers on the Government to make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

24 The Division Bench of the Gujarat High Court in the case of *Willowood Chemicals Pvt. Ltd.* v. *Union of India* [2018] 58 GSTR 310 (Guj) ; has negatived the contention of rule 117(1) being ultra vires referring to section 164 of the Act. The criticism of the petitioner on this approach of the Gujarat High Court is that though the court noticed the decision of the Supreme Court in the case of *K.I. Abraham* [1967] 20 STC 367 (SC) ; [1967] 3 SCR

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518, it failed to notice that the Supreme Court has held that imposition of the time-limit could not be referred to the general rule-making power.

25 In the case of *K. I. Abraham* [1967] 20 STC 367 (SC) ; [1967] 3 SCR 518, the Supreme Court was considering the Central Sales Tax Act. Reliance is placed on the observations of the Supreme Court in the following passage (pages 371-374 in 20 STC) :

> "4. It was contended on behalf of the appellants that the assessee had not filed the declarations in form 'C' before February 16, 1961, according to the third proviso to rule 6(1) and in view of the breach of this rule the assessee was not entitled to take advantage of the lower rate of assessment under section 8(1) of the Act. The opposite view-point was put forward on behalf of the assessee and it was argued that the third proviso to rule 6(1) was ultra vires of section 8(4) read with section 13(4)(e) of the Act. The decision of the question at issue therefore depends on the construction of the phrase 'in the prescribed manner' in section 8(4) read with section 13 of the Act. *In our opinion, the phrase 'in the prescribed manner' occurring in section 8(4) of the Act only confers power on the rule-making authority to prescribe a rule stating what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom they are sold, and to which authority the form is to be furnished. But the phrase 'in the prescribed manner' in section 8(4) does not take in the time-element. In other words, the section does not authorise the rule-making authority to prescribe a time-limit within which the declaration is to be filed by the registered dear. The view that we have taken is supported by the language of section 13(4)(g) of the Act which states that the State Government may make rules for 'the time within which, the manner in which and the authorities to whom any change in the ownership of any business or in the name, place or nature of any business carried on by any dealer shall be furnished.' This makes it clear that the Legislature was conscious of the fact that the expression 'in the manner' would denote only the mode in which an act was to be done, and if any time-limit was to be prescribed for the doing of the act, specific words such as 'the time within which' were also necessary to be put in the statute.* In *Stroud's Judicial Dictionary* it is said that the words 'manner and form' refer only 'to the mode in which the thing is to be done, and do not introduce anything from the Act referred to as to the thing which is to be done or the time for doing it.' In *Acraman* v. *Herniman* 117 E. R. 1164 the plaintiffs had become the assignees in bankruptcy proceedings

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against Garret who had executed on March 4, 1850 a warrant of attorney to the defendant *Herniman* on the strength of which the latter had obtained judgment against him and sold his goods. A copy of the warrant of attorney was filed with the officer acting as clerk of the docquets and judgments in the court of Queen's Bench on March 11, 1850, but no affidavit of the time of execution of such warrant of attorney was filed at any time. Stat. 12 and 13 Vict. C. 106, s. 136 provided that any warrant of attorney given by a trader to confess judgment in a personal action, not filed within twenty-one days after execution in the manner and form provided by Stat. 3. G-4, C. 39 should be deemed fraudulent, null and void. Section 1 of Stat. 3 G. 4, C. 39 required that such warrant of attorney should be filed together with an affidavit of the time of execution thereof, within twenty-one days of the execution of the warrant of attorney. Section 2 provided that if, after twenty-one days, the party giving such warrant of attorney shall be declared a bankrupt, then, unless the warrant or a copy thereof shall have been filed as aforesaid within 21 days from the execution or unless judgment shall have been signed or execution issued thereon within the same period, such warrant of attorney and the judgment and execution thereon, shall be deemed fraudulent and void against the assignees. As already stated, judgment had been signed on March 11, 1850, i. e., within twenty-one days of the execution of the warrant of attorney, and it was contended on behalf of the defendant that the judgment was valid notwithstanding the failure to file the affidavit as required by section 1 of Stat. 3, G. 4, C. 39. The arguments was rejected and it was held by the Queen's Bench that the warrant of attorney and the judgment thereon were void as against the assignees in bankruptcy. In the course of his judgment, Lord Campbell C. J. observed as follows :

'The enactment of stat. 12 and 13 Vict. C. 106, s. 136, is very plain; and I cannot agree to put a forced construction upon it. The Legislature has said there that any warrant of attorney given by a trader to confess judgment in a personal action, not filed within twenty-one days after execution in manner and form provided by stat. 3, G 4, C. 39, shall be deemed fraudulent, null and void the manner directed by that Act is filing the warrant or copy, with an affidavit of the time of execution. Here are a judgment and execution on a warrant of attorney given by a trader, and the warrant filed, but without an affidavit. The plain meaning of the late Act is that such a warrant shall be null and void against the assignees. The words "in manner and form,"

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refer only to the mode in which the thing is to be done, and do not introduce anything from the Act referred to, as to the thing, which is to be done or the time for doing it.'

5. The view that we have expressed as to the interpretation of section 8(4) of the Act is also supported by the 'Note' to the form of declaration—Form C-prescribed by rule 12 of the Central Sales Tax (Registration & Turnover) Rules, 1957. The note states that the form is to be furnished to the prescribed authority in accordance with the rules framed under section 13(4)(e) by the appropriate State Government'. *For the reasons expressed, we hold that the third proviso to rule 6(1) is ultra vires of section 8(4) read with section 13(3) and (4) of the Act*. It follows therefore that the assessee was not bound to furnish declarations in Form 'C' before February 16, 1961, in the present case. In the absence of any such time-limit it was the duty of the assessee to furnish the declarations in form C within a reasonable time, and in the present case it is the admitted position that the assessee did furnish the declarations on March 8, 1961, before the order of assessment was made by the Sales Tax Officer. We are accordingly of the opinion that the assessee has furnished the declarations in Form C in the present case within a reasonable time and there has been a compliance with the requirements of section 8(4)(a) of the Act. It follows that the High Court was right in quashing the order of assessment made by the Sales Tax Officer and directing him to make a fresh order of assessment after taking into consideration the declaration forms furnished by the assessee on March 8, 1961."

Thus, the Supreme Court considered the phrase "prescribed manner" in section 8(4) of the Central Sales Tax Act, and section 13(4)(g) to declare the invalidity. As our further analysis will show that the provisions under consideration of the Supreme Court and the context of the legislation were completely different than one at hand.

26 It is necessary to examine the scheme of the Act, the terminology employed conferring general rule-making power and the nature of the Legislation to adjudicate the charge of lack of rule-making power. When the court is called upon to decide a challenge to the validity of subordinate legislation, it will have to consider the nature, object, and scheme of the Act, and the area over which power has been delegated under the Act.

27 The respondents have stressed upon the distinctiveness of the Act and constitutional amendments governing it. With GST, a large number of Central and State taxes were subsumed in a single tax. The Constitution of India provides for segregation of fiscal powers between the Centre and the

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States essentially with no overlap. However, by the 100th Constitution Amendment Act, 2016, for the first time, both Centre and the States concurrently have the power to levy and collect GST. A mechanism for the joint operation of GST is evolved. Union levies CGST and the States levy SGST. The Parliament has exclusive power to levy IGST on inter-State trade or commerce. The Goods and Services Tax Council has been established. For dealing with the IT system, goods and services tax network (GSTN) has been set up. The point to stress here is that with goods and services tax, the indirect taxation regime in India has undergone a complete overhaul and it has brought about a unique amalgam of fiscal powers.

28 Another unique feature is the Chapter XX of the Act, which incorporates section 140. The petitioner bases it's right to section 140. The heading of Chapter XX is "*transitional provisions*". The heading of section 140 is "*transitional arrangements for input tax credit*". The words used provide a clue to the nature of this provision. The word "arrangement" means action, process, plan. "Transition" means a process or period changing from one state or condition to another[1]. Thus, the plain language understanding of these two phrases, juxtaposed, is a process of regulating the change from one position to another. Under this Chapter, the Legislature has devised an arrangement during the transitional period from the earlier tax system to GST regime. This transitionary provision is a unique legislative provision and merits different approach by the courts.

29 The amplitude of rule-making power is regulated by and is conditional upon the phraseology of the provision of the Act conferring it. If the provision granting rule-making power is couched in widest terms, then the doctrine of ultra vires cannot be casually applied.

30 Thus now to examine the phraseology used in section 164 of the Act. Section 164 reads thus :

> "164. *Power of Government to make Rules*.—(1) The Government may, on the recommendations of the council, by notification, make rules for carrying out the provisions of this Act.
>
> (2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
>
> (3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

1. See *Concise Oxford English Dictionary,* 11th Edition, Oxford University Press.

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(4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees."

31 Section 164(1) empowers the Government, on the recommendation of the GST Council, to make rules for carrying out the provisions of the Act. Sub-section (3) declares that power to make a rule under this section also include the power to give retrospective effect. A power to levy penalty in the contravention is declared in sub-section (4). Sub-section (2) is in most extensive terms. The Government can make rules for all or any of the matters which by this Act *are required to be, or may be prescribed* or in respect of which provisions *are to be or may be made by rules*. It is clear from reading section 164(2), that the Government has the power to make rules not only for the matters already prescribed but those may be prescribed in future or in respect of which provisions are to be made by rules. Thus, section 164 governs the most comprehensive range of rule-making power.

32 The reason behind granting an extensive range of rule-making power under this Act is not difficult to comprehend. It is because of the nature of the legislation in question. GST has overhauled the existing multiple tax regimes into a single tax. This a first of its kind in the country. Since the system and the principles under it are new, quick adaption to the peculiar situations that may arise is crucial. It is necessary that the system is dynamic to keep pace with technological and commercial developments. It should be flexible to meet the emerging challenges to the Revenue needs on an ongoing basis. It is for this flexibility that the Legislature has conferred an extensive rule-making power.

33 The reason for alluding to the legislative backdrop and the language of section 164 is because each disputes relating to limitation of rule-making power will have to be resolved with reference to the language of each provision. The doctrine of ultra vires should not be uniformly applied without examining the terminology of the concerned statute.

34 Turning now to the decisions cited by the petitioner. The rule-making power which arose for consideration of the Supreme Court in the Central Sales Tax Act in the case of *A. K. Abraham* [1967] 20 STC 367 (SC) ; [1967] 3 SCR 518 was section 8(4) and section 13. The petitioner has drawn comparison to section 13(3) of the Central Sales Tax Act with section 164 of the CGST Act. Relevant provisions are reproduced by the in para 3 of the judgment, as under (pages 369-371 in 20 STC) :

"3. Section 8 of the Act, as it stood on the material date, was to the following effect :

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'8. (1) Every dealer, who in the course of inter-State trade or commerce,—

(a) sells to the Government any goods ; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3) ;

shall be liable to pay tax under this Act, which shall be one per cent., of his turnover.

(2) the tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1),—

(a) in the case of declared goods, shall be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State ; and

(b) in the case of goods other than declared goods, shall be calculated at the rate of seven per cent., or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher ;

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that . . .

(4) the provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner—

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority ; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government.'

Section 13 states :

'(1) The Central Government may, by notification in the Official Gazette, make rules providing for—

(a) the manner in which applications for registration may be made under this Act, the particulars to be contained therein, the procedure for the grant of such registration, the circumstances in

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which registration may be refused and the form in which the certificate of registration may be given ;

(b) the period of turnover, the manner in which the turnover in relation to the sale of any goods under this Act shall be determined, and the deductions which may be made in the process of such determination ;

(c) the cases and circumstances in which, and the conditions subject to which, any registration granted under this Act may be cancelled ;

(d) the form in which and the particulars to be contained in any declaration or certificate to be given under this Act ; . . .

(3) The State Government may make rules, not inconsistent with the provisions of this Act and the rules made under sub-section (1), to carry out the purposes of this Act.

(4) In particular and without prejudice to the powers conferred by sub-section (3), the State Government may make rules for all or any of the following purposes, namely :— . . .

(e) the authority from whom, the conditions subject to which and the fees subject to payment of which any form of declaration prescribed under sub-section (4) of section 8 may be obtained, the manner in which the form shall be kept in custody and records relating thereto maintained, the manner in which any such form may be used and any such declaration may be furnished ;

(f) in the case of an undivided Hindu family, association, club, society, firm or company or in the case of a person who carries on business as a guardian or trustee or otherwise on behalf of another person, the furnishing of a declaration stating the name of the person who shall be deemed to be the manager in relation to the business of the dealer in the State and the form in which such declaration may be given ;

(g) the time within which the manner in which and the authorities to whom any change in the ownership of any business or in the name, place or nature of any business carried on by any dealer shall be furnished'."

Section 13(1) of the Central Sales Tax Act empowered the Government to make rules for manner of applying for registration, the period of turnover, cancellation of registration, the form and particulars and fees for form of declaration, declaration in certain classes of persons, and the general rule-making power of making rules "not inconsistent with the provi-

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sions of the Act and rules" to carry out the purpose of the Act. A bare perusal of this provision shows it deals with specific contingencies and granted limited rule-making power. In none of the decisions cited before us by the petitioner, including that of *K. I. Abraham* [1967] 20 STC 367 (SC) ; [1967] 3 SCR 518, wide ambit of rule-making power as in section 164 and that too to deal with transitional provisions of two tax regimes, has been considered. Therefore, the decisions cited cannot be straightway made applicable without reference to the language of section 164 to hold that rule 117 is ultra vires.

35 The situation regarding input-tax credit within GST regime, is also relevant to note. It is governed by section 16(4) of the Act. Section 16(4) reads thus :

> "*Section 16(4)* : A registered person shall not be entitled to take input-tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier."

Section 16(4) provides that a registered person shall not be entitled to take input-tax credit regarding any invoice or debit note for supply of goods or services after the due date of furnishing of the return under section 39 for the month of September following the end of the financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier. Section 16. Thus under the GST regime, also input-tax credit is not without time-limit. Prescribing a time-limit under the impugned Rule is not contrary to the object of the Act.

36 The respondents have, thus, rightly relied on section 164. The powers conferred by section 164(2) are broad and pervasive and take within its sweep the impugned rule.

37 The second limb of the petitioner's argument is that assuming there is general rule-making power under section 164(2), it cannot be exercised to take away substantive rights. This submission is founded on the proposition that Cenvat credit is a right ; the same cannot be taken away. The petitioner contends that the right to input credit may not be a common law right, but the statute confers it under section 140, and the same, thus, cannot be abridged by the executive through a rule-making power. Relying on the decision of the Supreme Court in the case of *Bharat Barrel* [1971] 2 SCC 860, it is contended that where substantive rights are affected, the

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power of prescribing limitation is kept by the legislation to itself. Thus, substantive rights can be done away only by the Parliament and not by its subordinates. The respondents contend that the input-tax credit, which is in the nature of exemption, is not a matter of right. Respondents rely on the decisions of this court. The counsel for the parties have cited various decisions on this point ; however, it is not necessary to refer to all as it is a reiteration of the same basic principle. We have, therefore restricted our discussion of the case laws cited on those which are closer to the controversy at hand. According to us, two decisions referred below are most relevant, having construed the very same provision and the same arguments.

38 The question of input tax credit being a right or otherwise has in the context of section 140 has been directly considered by this court in the case of *JCB India Limited* [2018] 53 GSTR 197 (Bom) and by the Gujarat High Court in the case of *Willowood* [2018] 58 GSTR 310 (Guj) ; [2014] 306 ELT 551(Guj). The Division Bench of this court in the case of *JSW Dharmatar Port Pvt. Ltd.* v. *Union of India* [2019] 20 GSTL 721 (Bom), in the context of refund for limitation has followed the decision in *Willowood* [2018] 58 GSTR 310 (Guj) ; [2014] 306 ELT 551 (Guj).

39 First, the decision of Gujarat High Court in *Willowood* [2018] 58 GSTR 310 (Guj) ; [2014] 306 ELT 551 (Guj). Here the court was considering a challenge to the constitutionality of section 140(1) of the Gujarat Goods and Services Tax Act. The vires of rule 117 of the Central and the Gujarat Goods and Services Tax Rules was also challenged. Prayers were sought to permit carry forward of the Cenvat credit. The Gujarat High Court took a review of case law on the subject. It referred to rule 164 of the Act. It observed thus (para 28, page 336 in 58 GSTR) :

> "25. *Section 140 of the Act envisages certain benefits to be carried forward during the regime change. As is well-settled, the reduced rate of duty or concession in payment of duty are in the nature of an exemption and is always open for the Legislature to grant as well as to withdraw such exemption.* As noted in case of *Jayam & Co.* [2016] 96 VST 1 (SC) ; [2016] 15 SCC 125, the Supreme Court had observed that input-tax credit is a form of concession provided by the Legislature and can be made available subject to conditions. Likewise, in the case of *Reliance Industries Limited* [2018] 50 GSTR 14 (SC) ; [2017] 16 SCC 28, it was held and observed that how much tax credit has to be given and under what circumstances is a domain of the Legislature. In the case of *Godrej & Boyce Mfg. Co. Pvt. Ltd.* [1992] 87 STC 186 (SC) ; [1992] 3 SCC 624, the Supreme Court had upheld a rule which restricts availment of Modvat credit to six months from the

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date of issuance of the documents specified in the proviso. The contention that such amendment would take away an existing right was rejected." (emphasis[1] supplied)

The Gujarat High Court held that the input-tax credit under section 140 was a matter of concession. The contention of the petitioner that Gujarat High Court in *Willowood* [2018] 58 GSTR 310 (Guj) ; [2014] 306 ELT 551 (Guj) has mixed up various concepts is neither warranted nor justified. The arguments were advanced regarding the reasonableness of restriction and the rule-making power and that the input credit being a right or otherwise, and they were considered together. The court kept in mind the distinction between the concepts. Merely because various heads of challenges have been dealt with together, it does not mean they have been mixed up.

40 The Division Bench of this court in *JCB India Limited* [2018] 53 GSTR 197 (Bom) considered the provisions of section 140 of the Act. Here the petitioner manufactured certain heavy machinery had in certain stock machines as of June 30, 2016, and according to it, it did not have to pay excise duty again after the onset of GST regime. In this context, the challenge was made to the provision. The petitioner had contended that input-tax credit being an integral part of GST law ; it is a right, and it is not a concession by the Government. The respondent-State contended the claim of the petitioner that the credit being right. The contention of the State is reproduced in para 30, which is the same advanced before us, is as under (pages 211 and 212 in 53 GSTR) :

"30. Our attention has been invited by Mr. Anil Singh to the settled principle that insofar as economic legislation is concerned, the grounds on which its constitutionality can be challenged are extremely limited. In the sense, if that legislation incorporates a policy measure, then the wisdom thereof cannot be questioned by this court. *Mr. Anil Singh would submit that this matter is of a concession or relaxation. Nobody can claim a vested right in such measures evolved by the Legislature. It is entirely for the Legislature to make a provision and restrict the benefit or concession or relaxation either to a class of persons or even if it extends to all, it can restrict the term or period or limit up to which the concession can be availed of*. In the instant case, the period of twelve months is provided as a safeguard against potential misuse of availment of credit during the transition period by placing restriction on availing credit based on documents which are not very old. There is no concept as equality in tax matters. Apart therefrom, similar restrictions had been in place on the manufacturers/

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service providers under the fifth proviso to sub-rule (7) of rule 4 of the erstwhile Cenvat Credit Rules, 2004. It is also argued by Mr. Anil Singh that when in a value added tax there was a restriction on availing of credit in law, now, there is a substantive provision in the new law. However, it is only the transitional provision which inserts or incorporates the above condition, as the Legislature deemed it fit and proper to enforce the new regime from July 1, 2017. When the new regime replaces a bundle of legislations seeking to tax the activity of manufacturers, sales and extension of service, then, it was deemed fit and proper that the transition to the new regime, from the old one, should be smooth. *For it to be smooth and proper, a restriction has been placed on availment of Cenvat credit during the transitional period and by making the above statutory prescription. Mr. Anil Singh would submit that it is entirely for the Legislature to make such a provision and its power in that behalf is not questioned*. If there is no challenge to the impugned condition on the ground of competence of the Legislature, then, the competent Legislature could have made a restrictive provision and which is precisely the intent. The transition from the old regime to the new one should be smooth and expedient. Hence, a reasonable period of twelve months has been provided. Why it is only twelve months and why it does not date back to the stage, the petitioners in these petitions would deem it fit and proper, is not the test which can be evolved and applied for considering the constitutionality of the legislation. Ultimately, it is the Legislature which is the best judge and in its wisdom, insofar as fiscal policies are concerned, it has imposed this condition. That is, therefore, reasonable and as explained in the affidavit in reply. On all counts, therefore, the challenge is devoid of merits according to Mr. Anil Singh and it deserves to be repelled." (emphasis[1] supplied)

Therefore, the issue as to the input credit contemplated under transitional provision being a concession or right was squarely put forth for consideration. The Division Bench analyzed the decisions on the subject of the Supreme Court in *Jayam & Co.* v. *Assistant Commissioner* [2016] 96 VST 1 (SC) ; [2016] 15 SCC 125, *Eicher Motors Ltd.* v. *Union of India* [1999] 106 ELT 3 (SC), *Osram Surya (P) Ltd.* v. *Commissioner of Central Excise, Indore* [2002] 142 ELT 5 (SC), *Samtel India Ltd.* v. *Commissioner of Central Excise, Jaipur* [2003] 155 ELT 14 (SC) and concluded by observing thus (pages 230-233 in 53 GSTR) :

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"56. *To our mind, therefore, the learned Additional Solicitor General is right in his contention that a Cenvat credit is a mere concession and it cannot be claimed as a matter of right*. If the Cenvat Credit Rules under the existing legislation themselves stipulate and provide for conditions for availment of that credit, then, that credit on inputs under the existing law itself is not a absolute but a restricted or conditional right. It is subject to fulfilment or satisfaction of certain requirements and conditions that the right can be availed of. *It is in these circumstances that we are unable to agree with the counsel appearing for the petitioners that the impugned condition defeats any accrued or vested right. It was never vesting in them in such absolute terms, as is argued before us*. If the existing law itself imposes condition for its enjoyment or availment, then, it is not possible to agree with the counsel that such rights under the existing law could have been enjoyed and availed of irrespective of the period or time provided therein. The period or the outer limit is prescribed in the existing law and the Rules of Cenvat credit enacted thereunder. In the circumstances, it is not possible to agree with the counsel appearing for the petitioners that imposition of the condition vide clause (iv) is arbitrary, unreasonable and violative of articles 14 and 19(1)(g) of the Constitution of India.

57. We would refer to the judgments which are heavily relied upon in this context. It is stated that the rights and privileges accrued during the existing law have been specifically saved under section 174 of the CGST Act, 2017. If what are saved are the rights and privileges of the nature noted above, then it cannot be said de hors the conditions or de hors the restriction on availment or enjoyment of that right they have been saved by the CGST Act. In other words, if rights are conferred with conditions under the existing law, then, they are saved by the CGST Act with such conditions and not otherwise. There must be clear provision to grant it otherwise than in terms of the existing law or in other words, the restrictions or conditions on availment of that right are removed totally. No such provision has been brought to our notice. It is clear that if right to availment of Cenvat credit itself is conditional and not restricted or absolute, then, the right to pass on that credit cannot be claimed in absolute terms. It is argued that it is a vested right accruing to the petitioner.

58. In the case of *Eicher Motors* [1999] 106 ELT 3 (SC), what was in issue before the Supreme Court must be noted. In *Eicher Motors* [1999] 106 ELT 3 (SC), the three-judge Bench of the Supreme Court

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of India was concerned with the validity and application of the scheme, as modified by introduction to rule 57F (read as rule 57F(4A)) of the Central Excise Rules, 1944, under which credit which was lying unutilised on March 16, 1995 with the manufacturers, stood lapsed in the manner set out in the provision. That was questioned.

. . . . .

60. In para 5 of this judgment, the introduction was traced and it was held that if on the inputs the assessee had already paid the taxes on the basis that when the goods are utilised in the manufacture of further products as inputs thereto, then, the tax on these goods gets adjusted which are finished subsequently. Thus, a right accrued to the assessee on the date when they paid the tax on the raw materials or the inputs and that right would continue until the facility available thereto gets worked out or until those goods existed. Thus, this is a case where the rule, as introduced, provided for total lapsing of that credit which was lying unutilised with the manufacturer on March 16, 1995. That was held to be impermissible within the scheme of the law. We are not considering here such a situation.

61. We are not confronted with a situation of the lapsing of the credit though the petitioners may equate the position before us with that of *Elcher Motors* [1999] 106 ELT 3 (SC). *We are dealing with the validity and legality of a condition imposed in the transitional arrangement. While moving from one legislation to another comprehensive legislation, in the latter legislation the Legislature deemed it fit and proper to continue the earlier or erstwhile arrangement by terming it as a transition or transitional one. That continuation was with conditions and one of the conditions which is questioned here is consistent with the conditions imposed under the existing law. Such a situation was not dealt with in* Eicher Motors. *Thus, the decision is clearly distinguishable.*

62. Reliance is then placed on another decision in the case of *Jayam & Co.* [2016] 96 VST 1 (SC) ; [2016] 15 SCC 125. Once again we must see what was dealt with in *Jayam & Co.* [2016] 96 VST 1 (SC) ; [2016] 15 SCC 125. The argument before the honourable Supreme Court in *Jayam & Co.* [2016] 96 VST 1 (SC) ; [2016] 15 SCC 125 was whether sub-section (20) of section 19 of the Tamil Nadu Value Added Tax Act, 2006 could be given retrospective effect. The appellants were dealers and registered as such under the provisions of the above VAT Act. They argued that they had dealt in electronic home appliances. They purchased them from local registered dealers on payment of

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VAT under the VAT invoice issued by the vendors. Thereafter, there was a resale to consumers under the VAT invoice charging appropriate VAT on their selling price. On resale, VAT is paid by the dealer. The dealer is entitled to avail input VAT credit and he is entitled to credit on VAT which was paid to the vendors on purchase of TV sets from the vendors. What had happened was, after the original tax invoice and availing the input-tax credit, the vendor gave a discount and purchase credit note was issued for a lesser price. The dealer took into account the price which it had paid to the vendor after adjusting the discount that was subsequently given to the dealer to arrive at net cost and adding VAT which was limited to the vendors by the dealers. The goods were resold at a lesser price. After the introduction of sub-section (20) in section 19 and once again, which has a non-obstante clause, the obligation was to reverse the input-tax credit. In other words, if the registered dealer sold goods at a price lesser than the price of the goods purchased by him, he had to reverse the amount of input-tax credit over and above the output tax of those goods. It was such an issue which was considered and in considering that the definitions and substantive provisions of the Tamil Nadu Value Added Tax Act, 2006 were referred. The Supreme Court noted that input-tax credit is a form of concession provided by the Legislature. It is not permissible to all kinds of sales and certain specified sales are specifically excluded. The concession of input-tax credit is available on certain conditions mentioned in this section, namely, section 19 and one of the most important condition was that, in order to enable the dealer to claim that credit it has to produce the original tax invoice, complete in all respect, evidencing the amount of input tax. It is in these circumstances that the honourable Supreme Court held that the challenge to the constitutional validity had to fail. It clearly held that when there was a concession given by the statute, the Legislature has to make provision stating the form and manner in which the concession is to be allowed and the sub-section (20) seeks to achieve that. There was no right, inherent or otherwise, vested with dealers to claim the benefit of input-tax credit but for section 19 of the VAT Act. We, therefore, do not see how de hors this position a reliance can be placed only on some paras of this judgment. We cannot ignore what was essentially decided. This is not a matter of retrospective operation of a fiscal statute, as was projected before us in the passing. This is a clear case as operating within the ambit of *Jayam & Co.* [2016] 96 VST 1 (SC) ; [2016] 15 SCC 125 itself. As is before us, a concession is being

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provided by the Legislature which but for the provision granting such concession could have not been availed. The availment of Cenvat credit or input-tax credit is clearly termed as a concession. With the conditions imposed, the concession could have been availed of. In the absence of a substantive provision granting such concession, there would have been no concession at all. Thus, one cannot pick and choose a condition for challenge by alleging that the availment is undisputedly conditional but one of the conditions, though having nexus with the availment, is unconstitutional or arbitrary and excessive. The nature of that condition, its placement consistent with the scheme is then conveniently ignored. We cannot allow this argument to be built on the basis of reliance on para 18 of the judgment in *Jayam* [2016] 96 VST 1 (SC) ; [2016] 15 SCC 125." (emphasis[1] supplied)

The ratio laid down by the Division Bench in *JCB India Limited* [2018] 53 GSTR 197 (Bom) interpreting the transitional provisions and distinguishing the other decisions, is unequivocal.

41 The petitioner has sought to distinguish the decisions in *Willowood* [2018] 58 GSTR 310 (Guj) ; [2014] 306 ELT 551 (Guj) and *JCB India Limited* [2018] 53 GSTR 197 (Bom) contending that the Division Bench was not considering section 140(1) and the right under different sub-sections of section 140 are different and operate in different fields and what is relevant for one class cannot be made applicable to another class. It is submitted that the decisions in *JCB India Limited* [2018] 53 GSTR 197 (Bom) and *Willowood* [2018] 58 GSTR 310 (Guj) ; [2014] 306 ELT 551 (Guj) have considered section 140(3) of the Act. We do not think these decisions can be distinguished in this manner. The decisions in *JCB India Limited.* [2018] 53 GSTR 197 (Bom) and *Willowood* [2018] 58 GSTR 310 (Guj) ; [2014] 306 ELT 551 (Guj) have laid down a general principle of law. The question of credit in a transitional provision being a concession or a right was argued and has been considered. We have not been shown any decision of this court to the contrary. As a matter of judicial discipline, we will have to follow the dicta laid down by the Division Bench of this court in *JCB India Limited* [2018] 53 GSTR 197 (Bom)

42 The decision of the Supreme Court in the case of *Collector of Central Excise, Pune* v. *Dai Ichi Karkaria Ltd.* [1999] 112 ELT 353 (SC) cited by the petitioner refers to Modvat credit and in deciding a corelation of the raw material and final product. The apex court held that it is not as if the credit can be taken only on the final product manufactured out of a particular raw

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material in which the credit is related. It was held that the credit may be taken on a final product on the very day it has become available. It is in this context, the nature of Modvat credit was held to be indefeasible. The learned Additional Solicitor General has rightly distinguished this decision by pointing out that this decision does not consider the contingency of time-limit on availment of credit, and also not in a transitionary provision. Under the impugned rule, the input credit has been denied per se, but a time-limit has been placed on its availment.

43 The Cenvat Credit Rules prescribe conditions for availment of that credit. The rights and privileges accrued during the existing law have been saved under section 174 of the Act. If what is saved from the earlier regime was conditional, then it cannot be converted to something without conditions in the new regime during the period of transition. If, before and after the GST regime, the availment of input credit is conditional, it cannot be that it is without any limit in the transitional period. With the advent of an entirely new tax regime, the earlier credit could have lapsed, but as and by way of concession it is permitted to be carried forward for a limited time. Thus, going by the scheme of the Act, under section 140(1), the reference to input-tax credit is not by way of a right, but as a concession.

44 The petitioner advanced certain ancillary submissions. First, section 164(1) contemplates recommendation of the GST Council, and the GST Council had recommended a longer period. It was contended that the GST Council recommendations are binding regarding the rule-making power. However, this argument overlooks that power under section 164(2) is without prejudice to the power under section 164(1) regarding the recommendation of the GST Council.

45 Second, that the same relief sought for by the petitioner can be granted under section 54 of the Act and, therefore, necessary directions be issued. This argument is advanced for the first time across the bar with no pleadings or prayers. The respondents had no opportunity to deal with the same.

46 Third, the scheme of the Act is that there is self declaration which has to confirmed later and, therefore, there is no prejudice to the respondents if credit is given now. It was contended that the submission of return under section 140 is subject to confirmation under the provisions governing assessment. This submission is incorrect. Acceptance of assessment is not subject to confirmation but being based on the principle of self-assessment, is open for verification ; which is a different aspect. It is contended that claim of the input-tax credit is in the returns to be filed and Form is not important, and once this procedure is laid down, a time-limit cannot be provided. Once it is held that the rule-making power exists and the placing

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of time-limit on the concession is not ultra vires, then the further tinkering with the statutory scheme on hyper-technical and academic arguments is neither desirable nor necessary.

47 Thus the time-limit in rule 117(1) is traceable to the rule-making power conferred in section 164(2). The credit envisaged under section 140(1) being a concession, it can be regulated by placing a time-limit. Therefore, the time-limit under rule 117(1) is not ultra vires of the Act.

48 As regards laying of the rule before the Parliament, the petitioner contends that laying of the rule before the Parliament will not cure the defect if there is no rule-making power exist. For this purpose, reliance is placed on the decision in the case of *Hukam Chand* v. *Union of India* [1972] 2 SCC 601. It is contended that the fact that the Rules have to be laid before the Parliament does not confer validity if the rule is made not in conformity with the Act. In view of our finding that the rule-making power exists for rule 117 and traceable to section 164, laying the rule before the Parliament strengthen the case of the respondents for supporting its validity.

49 We now turn to the second part of the discussion that is the challenge to the rule on the touchstone of article 14 of the Constitution of India.

50 The petitioner contends that the time-limit imposed under rule 117 is arbitrary, unreasonable and in violation of article 14. It is contended that the right accrued to the petitioner of input credit is being taken away by the impugned rule. The petitioner contends that section 140 of the Act, through its sub-sections, operate in different scenarios, and need to be treated differently. It is contended that under the Cenvat Credit Rules, 2004, the taxpayer was entitled to 50 per cent. of credit in the earlier year of purchase of capital goods and balance 50 per cent. in the subsequent year and, therefore, on the relevant date right to take the balance of 50 per cent. credit had accrued. It is contended that this right has been saved by saving clause in section 174. The petitioner has placed strong reliance on the decisions of the Supreme Court in the cases of *Eicher Motors* [1999] 106 ELT 3 (SC), and *Osram Surya (P) Ltd.* [2002] 142 ELT 5 (SC). It is contended that the time-limit has no nexus to the Act. The respondents have supported the impugned legislation contending that without time-limit, the concept of transitional provisions will become nugatory.

51 This analysis needs be prefixed by referring to the scope of judicial scrutiny in the matters of economic legislations. When economic legislation is questioned, the courts are slow to strike down a provision which may lead to financial complications. The Supreme Court has sounded a note of caution in the cases of *R. K. Garg* v. *Union of India* [1982] 133 ITR 239 (SC) ; [1981] 4 SCC 675, *Bhavesh D. Parish* v. *Union of India* [2000] 5 SCC

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471, *Director General of Foreign Trade* v. *Kanak Exports* [2016] 2 SCC 226, *Swiss Ribbons P. Ltd.* v. *Union of India* [2019] 213 Comp Cas 198 (SC) ; [2019] 4 SCC 17. The summary of the principles laid down is as follows. Taxation issues are highly sensitive and complex. Legislations in the economic matters are based on experimentations. The court should decide the constitutionality of such legislation by the generality of its provisions. The court cannot assess or evaluate the impact of provision and whether it would serve the purpose in view or not. Trial and error method is inherent in the economic endeavours of the State. In matters of economic policy, the accepted principle is that the courts should be cautious to interfere. The interference by the courts in a complex taxation regime can have large-scale ramifications. Unless the provision is plainly unjust or glaringly unconstitutional, the courts should show judicial restraint. In complex economic matters, rules are generally based on trial and error and their validity cannot be tested on any rigid prior considerations or by applying strait-jacket formulas.

52 One of the foundations of the argument that the time-limit in rule 117 is unreasonable is that it takes a right. In view of two conclusions we have reached much of the force of this argument is diluted. Firstly what is claimed by the petitioner is not a right but concession. Secondly, the rule is not ultra vires. Even on the aspect of unreasonableness, judicial pronouncements already hold the field. Division Bench of this court in *JCB India Limited* [2018] 53 GSTR 197 (Bom) observed that the object and purpose sought to be achieved of not permitting the existing arrangement to continue endlessly. For the new regime to come into force, the transitional arrangements have been made. Division Bench observed that section 140 has a clear nexus to the object sought to be achieved and can be struck down as having no such relation or nexus. The Gujarat High Court in the case of *Willowood* [2018] 58 GSTR 310 (Guj) ; [2014] 306 ELT 551 (Guj) on the same aspect has observed thus in the economic matters of such vast scale and the broader considerations of the State exchequer, cannot be kept out of purview while interpreting a statutory provision. The court noted that the entire exercise was unprecedented in the Indian context. The claims of carrying forward of the existing duties and credits during the period of migration, therefore, had to be within the prescribed time. The court observed that doing away with the time-limit for making declarations could cause multiple large-scale claims trickling in for years together after the new tax structure is put in place. The bench observed this would besides making matching of the credits impractical if not impossible, also affect the revenue collection estimates. The view taken by the Gujarat High

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Court in *Willowood* [2018] 58 GSTR 310 (Guj) ; [2014] 306 ELT 551 (Guj) is that rule 117 is not ultra vires and there is no indefeasible right to carry forward Cenvat credit and the stipulation of the time-limit is reasonable.

53 We do not find that the time-limit in the impugned rule is arbitrary or unreasonable. To plan to allocate resources, it is necessary to know the amount of taxes available by a particular time. For an efficient administration of a tax system, certainty, especially in terms of time, is important. Calculations of the tax liability dictated by subjective conditions can lead to uncertainty. Such uncertainty makes it difficult to budget and ensure that funds are allocated where they are most required. The time-limit for availing of input-tax credit in the transitionary provisions is thus rooted in the larger public interest of having certainty in allocation and planning. The time-limit under rule 117 is thus not irrelevant.

54 Section 140 read with rule 117 under Chapter XX deals with transitional provisions for availment of Cenvat credit. It permits availment of Cenvat credit, however within a stipulated transitional period. This availment is not absolute and is with a time-limit. Upholding only the right to carry forward the credit and ignoring the time-limit would make the transitional provision unworkable. The credit under the transitional provision is not a right to be exercised in perpetuity. By the very nature of the transitional provision, it has to be for a limited period.

55 The petitioner has placed on record the concept notes and flyers issued by CBEC to demonstrate the salient features of GST and how the input-tax credit is a core of the GST regime. Based on this material and the statements and objects and reasons of the Act, it is contended that a transitional provision is for a smooth transition of existing taxpayers to GST regime and it is to avoid cascading effect of the taxes. The statements and objects of the Act cannot, of course, be debated, but nowhere there any indication that for availing of input-tax credit in a transitional provision there is no time-limit. The decision of the Supreme Court in *Sambhaji* v. *Gangabai* [2009] 240 ELT 161 (SC), the decision of the Allahabad High Court in *Global Sugar Ltd.* v. *Commissioner of Central Excise* [2016] 334 ELT 604 (All) and the decision of the Madras High Court in *Hospira Health Care India Pvt. Ltd.* v. *Development Commissioner, MEPZ SEZ & Heous, Chennai* [2016] 92 VST 513 (Mad) ; [2016] 340 ELT 668 (Mad) relied upon by the petitioners are all the cases, as rightly pointed out by the respondents are within a tax regime. None of these decisions deal with transitional provisions between two tax regimes.

56 Reference is already made to section 16(4) of the Act. Section 16(4) provides that a registered person shall not be entitled to take input-tax

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credit in respect of any invoice or debit note for the supply of goods or services or both, after the due date of furnishing of the return under section 39 for the month of September following the end of the financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier. Thus even under the GST law, the input-tax credit cannot be availed without any time-limit. It cannot be that under the GST law, there is a time-limit, but for the transitional period, there is no such time-limit. Once under the GST law for future transactions time-limit is stipulated, then there is nothing unreasonable in the stipulated time-limit for the transitional period.

57 Various decisions of the High Courts have been cited by the petitioner regarding rule 117 and section 140 of the Act wherein directions have been issued in writ jurisdiction for opening the TRAN-1 Form. These are *Jakap Metind Pvt. Ltd.* v. *Union of India through the Secretary* [2020] 76 GSTR 220 (Guj) Special Civil Application 19951 of 2018. *Aadinath Industries* v. *Union of India* [2020] 72 GSTR 247 (Delhi) ; 2019-VIL-526-DEL, *Adfert Technologies Pvt. Ltd.* v. *Union of India* [2020] 73 GSTR 267 (P&H) ; 2019-VIL-537-P&H, *Afran Technology Pvt. Ltd., Asiad Paints Limited* v. *Union of India* [2020] 79 GSTR 40 (Karn) ; 2019-VIL-598 KAR, *Gillette India Limited* v. *Union of India* [2020] VIL-01-DEL, *Jakap Metind Pvt. Ltd.* v. *Union of India* [2020] 76 GSTR 220 (Guj) ; 2019-VIL-556-GUJ, *Jay Bee Industries* v. *Union of India* [2020] 74 GSTR 295 (HP) ; 201-VIL-570-HP, *A. F. Babu* v. *Union of India* [2020] 78 GSTR 426 (Ker) ; [2019] VIL-610-KER, *Tara Exports* v. *Union of India* [2018] 58 GSTR 46 (Mad) ; 2019-VIL-432-MAD, *Siddharth Enterprises* v. *Nodal Officer* [2019] 71 GSTR 346 (Guj) ; 2019-VIL-442-GUJ, *Ra Export Siddhartha Enterprise, Triveni Needdles Pvt. Ltd.* v. *Union of India* 2019-VIL-618-DEL, *Bhargava Motors* v. *Union of India* [2019] 66 GSTR 114 (Delhi) ; 2019-VIL-218-DEL W. P. (C) No. 1280 of 2018, dated May 13, 2019, *Blue Bird Pure Pvt. Ltd.* v. *Union of India* [2019] 68 GSTR 340 (Delhi) ; [2019] 7 TMI 1102 ; 2019-VIL-347-DEL. The decision in the case of *Adfert Technologies Pvt. Ltd.* [2020] 73 GSTR 267 (P&H) ; 2019-VIL-537-P&H of the Division Bench of the Punjab and Haryana High Court relied by the petitioner was one wherein direction was issued to permit the revision of incorrect TRAN-1 Form and after noticing the decision of the Gujarat High Court of *Willowood* [2018] 58 GSTR 310 (Guj) ; [2014] 306 ELT 551 (Guj), the Division Bench stated that they are not in agreement with the view taken. However, we do not find there is no discussion in the said decision upholding the validity of rule 117. The decision is based primarily on the Cenvat credit being a vested right. The decision of *Siddharth Enterprises* [2019] 71 GSTR 346

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(Guj) ; 2019-VIL-442-GUJ of the Gujarat High Court does not refer to the decision in *Willowood* [2018] 58 GSTR 310 (Guj) ; [2014] 306 ELT 551 (Guj) even though it was rendered prior. These decisions are founded on the basis that the Cenvat credit is a vested right guaranteed under article 300A of the Constitution of India. In none of the decisions, rule 117 has been struck down as arbitrary.

58 The High Courts in the above decisions have exercised writ jurisdiction to direct the respondents to give relief to the petitioners before it. The courts may have done so in equity jurisdiction. We have concluded that the time-limit stipulated is neither ultra vires nor unreasonable. Issuing a writ would mean overriding this time-limit. The concept of a time-limit under this provision is not casual but has a larger purpose to serve. The GST Act deals with the generation and distribution of the revenue. The collected revenue is expended on various functions for which budgetary allocations are made and time-limits are stipulated for the execution of various schemes. For fiscal planning, certainty regarding receipt and distribution of revenue is necessary. If relief is to be granted to the individual petitioner overriding the time-limit on equity, the perception of what is equitable will differ from authority to authority. This would lead to uncertainty. The operation of this complicated tax system will become unworkable. The time-limit placed under the impugned rule being rooted in need to have certainty in fiscal management, we are of the opinion that equity jurisdiction ought not to be exercised.

59 As another facet of arbitrariness it was argued that insistence on submitting declaration electronically creates a classification between those with needed capabilities and equipment and those who do not and hence it is violative of article 14. There is no merit in this submission. Entire GST system, not only section 140 and rule 117 envisage electronic filing. It has an intricate inter-linking regulated by software and data analysis. Numerous Departments and enactments now mandate electronic submission of forms. With the ever-expanding sweep of digital data pervading almost all walks of life, it will be a retrograde step to declare a provision unreasonable because it mandates electronic compliance, especially when the enactment in question is an intricate tax regime powered by a software-based system.

60 To summarize, therefore, the time-limit stipulated under rule 117 is neither unreasonable or arbitrary nor violative of article 14. This rule is in accordance with the purpose laid down in the Act.

61 Now we turn to the third aspect of the matter that is the meaning of the phrase "technical difficulties" under rule 117A and the role of the IT redressal cell and whether by creating categories discretion is being

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fettered ; To appreciate the petitioners' challenge, the procedure to be followed while submitting Form TRAN-1 needs to be narrated. The respondents have placed on record the procedure, which is : First, the taxpayer has to log into the GST portal. Then navigate to the TRAN-1 Form in services section. If the TRAN-1 is already submitted or filed, then a reopen button is provided to the taxpayer to modify previously submitted/filed data or for adding missing records. Once the taxpayer clicks on the reopen button, then the status of TRAN-1 is changed to reopen. The taxpayer then fills up the respective sections of the TRAN-1 Form and then enters details under various tables such as table 5A, 5B, 7A, 8, etc. The taxpayer then saves TRAN-1 and verifies the entered values. After that, the TRAN-1 is submitted on GST portal. After its submission, TRAN-1 credit is calculated based on the values in the form and entries are made to the electronic input-tax credit (ITC) ledger. Then the taxpayer is required to authenticate TRAN-1 by attaching digital signature using and file TRAN-1 form. Then the filing process is complete. Thereafter the entries of the amount being posted in the electronic ITC ledger can set off liabilities in GSTR-3B. The credit of TRAN-1 is credited and posted in ledgers for use to set off liabilities when the taxpayer "submits" TRAN-1 Form. This is the method followed by the taxpayer.

62 The respondents noted the existence of technical difficulties in the filing of TRAN-1 and incorporated rule 117(1A). Rule 117(1A) has been inserted with effect from September 10, 2018. Rule 117(1A) reads as under :

> "Rule 117 : Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day (Chapter-XIV : Transitional Provisions) (1) . . .
>
> (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 March 31, 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. . . ."

This rule provides that 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 March 31, 2019, regarding registered persons who could not submit the said declaration by the due date because of technical difficulties on the common portal

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and regarding whom the GST Council has made a recommendation for such extension.

63 First, the time-limit was March 31, 2019. Now, with further extension, it is extended to March 31, 2020. However, for the extended period to apply, certain criterion has to be satisfied. The extension applies to the submission of GST TRAN-1 to be made electronically. It applies only to those registered persons who could not submit their declaration by the due date under rule 117(1) because of technical difficulties. The technical difficulties have to be the ones referable to the common portal of GST, and last, it in whose cases the Council has made a recommendation for an extension.

64 In the GST Council meeting held on March 10, 2018, a grievance redressal mechanism was set up to address the issue. This mechanism was called IT Grievance Redressal Cell. The IT grievance redressal cell consists of three members, namely—CEO (GSTN), DG (Systems) GBEC and a third member from any State nominated by Secretary. GST Council, GSTN, Central and State Governments appointed Nodal Officers to address the problem a taxpayer faces due to the technical difficulties.

65 Details of the grievance redressal mechanism is on record. An outline is : If the taxpayers encounter a technical difficulty regarding TRAN-1 Form, he has to apply to the Nodal Officers. The technical difficulty relating to the common portal and not individual problems and local issues such as non-availability of internet connectivity, power failure or a problem of a specific system. The application should show bona fide attempts by the taxpayer to comply with the due process of law. The application is forwarded to GSTN, who would on receipt of the application, after identifying the issue, forward the same to the IT Grievance Redressal Committee for decision. The cases are examined and are categorized broadly reason-wise and then further grouped into two major categories as category "A" and category "B". Category "A" includes cases in which the taxpayer could not file TRAN-1 Form because of technical difficulties, whereas category "B" includes cases where detailed analysis at GSTN reveals that there were no technical issues in filing TRAN-1 Form as per the system logs. Category "B" is further sub-divided into eleven categories based on the claims of taxpayers and cases forwarded by Nodal Officer. System logs regarding the filing of TRAN-1 Form are examined to ascertain the evidence of error of submission/filing of TRAN-1 Form before the due date. In short, if, as per GST system log, there is no evidence of submission/filing of TRAN-1 Form on the common portal, it has to be concluded that the taxpayer did not try for saving/submitting or filing TRAN-1 Form before the due date and, not entitled to the benefit of the extended period under rule 117(1A).

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66 The petitioner contends that the ambit of phrase "technical difficulties" will have to be defined by the court and it cannot be left to the IT grievance cell of the GST Council to define the same. Further, an ad hoc criterion has been devised classifying the registered persons into arbitrary groups and for some recommendation is made, and for some, it is rejected. The petitioner contends that the GST Council cannot delegate this power to the IT Grievance Redressal Committee. This submission cannot be accepted. The GST Council is not a body to resolve technical issues. Therefore, an IT Grievance Redressal Mechanism was developed by the GST Council. This Committee involved the CEO of the GST, Network Director General of Systems, CBSC and the nominee from State as technical persons. Based on the report of this Technical Committee, a further recommendation would be made. Therefore, there is no merit in the contention that the power could not have been delegated to the IT Grievance Redressal Committee.

67 The petitioner then contends that the phrase "technical difficulty" in rule 117(1A) has to be broadly construed. It is not possible to do so. Rule 117(1A) refers to technical difficulties in online submission of TRAN-1 Form on the common portal. These technical difficulties are not the ones faced in general but on the common portal of the GST. The meaning of the phrase "technical difficulty" is, thus clear that the technical difficulties are those which arise at the common portal of GST.

68 The IT Grievance Redressal Cell has taken the system log on the common portal as evidence of attempts made. There is no merit in the criticism of the petitioner in taking system logs as a basis for determining technical difficulties. Since rule 117(1A) refers only to the technical difficulties on the common portal, the record on the common portal would be a material piece of evidence. Since the phrase "technical difficulty" does not envisage any other difficulties, the IT Grievance Redressal Committee rightly evolved the criteria of system logs. The system log is an auto-generated data which records the activities performed. A system log maintained by the portal shows details of requests made at the page. This data is not manually collected but auto-generated. From the system log, it can be ascertained whether an attempt was made to access the data. Therefore, not only there is nothing arbitrary insisting on system log but a correct criterion to be adopted.

69 The petitioner then contended that insisting on system log as proof from the very system which has technical difficulties, is arbitrary and unworkable. There is no merit in this contention. It is not the case that common portal had stopped working or that none of the taxpayers could submit the declarations. As per the data given by the respondents, thousands of

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registered users could submit their TRAN-1 Form declarations. In the affidavit-in-reply filed by the Commissioner, the number of entries made between the last four days of the closing facility of TRAN-1 has been placed on record. These are : December 24, 2017–36349 ; December 25, 2017–97939 ; December 26, 2017 – 233455 and on December 27, 2017 – 165723. The object of bringing in rule 117(1A) did acknowledge that certain registered user en-countered technical difficulties in the common portal. However, it does not mean that the common portal had stopped working ; only that some registered users could not submit their forms. Whether they made an effect could be seen from the system logs.

70 There would be some who never attempted to submit the TRAN-1 Form. There would be some who attempted but encountered difficulties at their end. There would some who encountered difficulties on the common portal. Since it is the only third category covered by rule 117(1A), it had to be asserted from the system log of the common portal itself. Insisting on system log as proof of technical difficulties, thus, is neither arbitrary. The respondents have pointed out that the cases where there were technical difficulties on the common portal as seen from the system log, recommendations have been made in their favour. It is also pointed out that many taxpayers did not file their applications until the last minute. It has been tried to be suggested that filing of TRAN-1 Form was deliberately delayed by some to create fake invoices.

71 Petitioner contended that the categorization based on system log amounts to a fettering of discretion. There is no merit in this submission. The categorization made by the cell is not fettering the discretion but involving rules of evidence to determine whether a registered user encountered difficulties while submitting forms on the common portal. It is only if the registered user encountered technical difficulties on the common portal, that rule 117(1A) comes into play.

72 In some decisions referred to in para 57, the courts have directed the respondents to open the portal. It is observed therein that many of the registered persons come from a rural and semiliterate background and they may have no record, and they cannot be made to suffer when the systems of the respondents were not efficient. This approach proceeds on the basis that once there is an acknowledgment of technical difficulties, a liberal view must be taken. However, though the respondents have accepted there have been technical difficulties, they have not admitted a complete failure. A mechanism has been set up. A uniform and technically capable criteria to determine technical difficulties on the portal of system logs has been evolved. There is no allegation, nor there is any question of any

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THE

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(STATUTES)

Date of coming in to force on certain provisions Karnataka Goods and Services Tax (Amendment) Act, 2019

Notification No. FD 03 CSL 2020 (1/2020), dated 7th January, 2020[1]

In exercise of the powers conferred by sub-section (2) of section 1 of the Karnataka Goods and Services Tax (Amendment) Act, 2019 (Karnataka Act 23 of 2019), the Government of Karnataka hereby appoints the 1st day of January, 2020, as the date on which the provisions of sections 2 to 21, except section 2, section 7, section 10 and sections 13 to 20 of the Karnataka Goods and Services Tax (Amendment) Act, 2019 (Karnataka Act 23 of 2019), shall come into force.

Failure to furnish return in Form GSTR-1—Waiver of late fee—Amendment (Karnataka)

Notification No. FD 03 CSL 2020 (e) (2/2020), dated 16th January, 2020[1]

In exercise of the powers conferred by section 128 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017), the Government of Karnataka, on the recommendations of the Council, hereby makes the following further amendment in the Government of Karnataka Notification (02/2018) No. FD 47 CSL 2017, dated 23rd January, 2018, published in the Karnataka Gazette, Extraordinary, Part IV-A, No. 177, dated the 23rd January, 2018, namely :—

In the said notification, in the third proviso for the figures, letters and word "10th January, 2020", the figures, letters and word "17th January, 2020" shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 10th day of January, 2020.

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1. Karn. Gazette, Extry. Issue 06, Vol. 155, dated 6-2-2020.

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Class of registered person who shall prepare invoice (Karnataka)

Notification No. FD 03 CSL 2020 (03/2020), dated 27th January, 2020[1]

In exercise of the powers conferred by sub-rule (4) to rule 48 of the Karnataka Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby notifies registered person, whose aggregate turnover in a financial year exceeds one hundred crore rupees, as a class of registered person who shall prepare invoice in terms of sub-rule (4) of rule 48 of the said rules in respect of supply of goods or services or both to a registered person.

2. This notification shall come into force from the 1st day of April, 2020.

Special procedure to follow the class of registered persons (Karnataka)

Notification No. FD 03 CSL 2020(e) (04/2020), dated 19th March, 2020[2]

In exercise of the powers conferred by section 148 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017) (hereinafter referred to as the said Act), the Government of Karnataka, on the recommendations of the Council, hereby notifies the persons who are foreign company which is an airlines company covered under the notification issued under sub-section (1) of section 381 of the Companies Act, 2013 (Central Act 18 of 2013) and who have complied with the sub-rule (2) of rule 4 of the Companies (Registration of Foreign Companies) Rules, 2014, as the class of registered persons who shall follow the special procedure as mentioned below.

2. The said persons shall not be required to furnish reconciliation statement in *Form GSTR-9C* to the Karnataka Goods and Services Tax Rules, 2017[3] under sub-section (2) of section 44 of the said Act read with sub-rule (3) of rule 80 of the said rules :

Provided that a statement of receipts and payments for the financial year in respect of its Indian business operations, duly authenticated by a practicing chartered accountant in India or a firm or a limited liability partnership of practicing chartered accountants in India is submitted for each GSTIN by the 30th September of the year succeeding the financial year.

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1. Karn. Gazette, Extry. Issue No. 06, Vol. 155, dated 6-2-2020.
2. Karn. Gazette, Extry. No. 99, Part IV-A, dated 19-3-2020.
3. See [2017] 45 GSTR (St.) 402.

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Corporate debtors undergoing corporate insolvency resolution process—Special procedure (Karnataka)

Notification No. FD 03 CSL 2020 (05/2020), dated 27th March, 2020[1]

In exercise of the powers conferred by section 148 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017) (hereinafter referred to as the said Act), the Government of Karnataka, on the recommendations of the council, hereby notifies those registered persons (hereinafter referred to as the erstwhile registered person), who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016 (Central Act 31 of 2016), undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP), as the class of persons who shall follow the following special procedure, from the date of the appointment of the IRP/RP till the period they undergo the corporate insolvency resolution process, as mentioned below.

2. *Registration*.—The said class of persons shall, with effect from the date of appointment of IRP/RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration) in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP :

Provided that in cases where the IRP/RP has been appointed prior to the date of this notification, he shall take registration within thirty days from the commencement of this notification, with effect from date of his appointment as IRP/RP.

3. *Return*.—The said class of persons shall, after obtaining registration file the first return under section 40 of the said Act, from the date on which he becomes liable to registration till the date on which registration has been granted.

4. *Input tax credit*.—(1) The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since his appointment as IRP/RP but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the said Act and the rules made thereunder, except the provisions of sub-section (4) of section 16 of the said Act and sub-rule (4) of rule 36 of the Karnataka Goods and Service Tax Rules, 2017 (hereinafter referred to as "the said Rules").

1. Karn. Gazette, Extry. Issue No. 15, Vol. 155, dated 9-4-2020, p. 1222.

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(2) Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP/RP till the date of registration as required in this notification or thirty days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the said Act and the rules made thereunder, except the provisions of sub-rule (4) of rule 36 of the said rules.

(3) Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP/RP to the date of registration in terms of this notification shall be available for refund to the erstwhile registration.

Explanation.—For the purposes of this notification, the terms "corporate debtor", "corporate insolvency resolution professional", "interim resolution professional" and "resolution professional" shall have the same meaning as assigned to them in the Insolvency and Bankruptcy Code, 2016 (Central Act 31 of 2016).

Class of registered persons who should follow the special procedure for furnishing of return and payment of tax—Amendment (Karnataka)

Notification No. FD 03 CSL 2020 (e) (06/2020), dated 27th March, 2020[1]

In exercise of the powers conferred by section 148 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017), the Government of Karnataka, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of Karnataka, Notification (08/2019) No. FD 47 CSL 2017, dated April 23, 2019 published in the Karnataka Gazette, Extraordinary, Part IV-A, No. 322, dated the 23rd April, 2019, namely :—

In the said notification, in paragraph 2, the following proviso shall be *inserted*, namely :—

"Provided that the said persons who have, instead of furnishing the statement containing the details of payment of self-assessed tax in *Form GST CMP-08* have furnished a return in *Form GSTR-3B* under the Karnataka Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules) for the tax periods in the financial year 2019-20, such taxpayers shall not be required to furnish the statement in outward supply of goods or

1. Karn. Gazette, Extry. Issue No. 15, Vol. 155, dated 9-4-2020, p. 1225.

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services or both in *Form GSTR-1* of the said rules or the statement containing the details of payment of self-assessed tax in *Form GST CMP-08* for all the tax periods in the financial year 2019-20."

Class of registered person who shall prepare invoice and other prescribed documents in respect of supply of goods or services or both to a registered person (Karnataka)

Notification No. FD 03 CSL 2020 (e) (07/2020), dated 27th March, 2020[1]

In exercise of the powers conferred by sub-rule (4) of rule 48 of the Karnataka Goods and Services Tax Rules, 2017 (hereinafter referred as said rules), the Government of Karnataka on the recommendations of the Council, and in supersession of the Government of Karnataka Notification (03/2020) No. FD 03 CSL 2020, dated January 27, 2020[2] published in the Karnataka Gazette, Volume 155, Issue 06, dated 6th February, 2020, except as respects things done or omitted to be done before such supersession, hereby notifies registered person, other than those referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of the said rules, whose aggregate turnover in a financial year exceeds one hundred crore rupees, as a class of registered person who shall prepare invoice and other prescribed documents, in terms of sub-rule (4) of rule 48 of the said rules in respect of supply of goods or services or both to a registered person.

2. This notification shall come into force from the 1st October, 2020.

Dynamic Quick Response Code in respect of invoice issued by specified registered person to an unregistered person (Karnataka)

Notification No. FD 03 CSL 2020 (e) (08/2020), dated 27th March, 2020[3]

In exercise of the powers conferred by the sixth proviso to rule 46 of the Karnataka Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), the Government of Karnataka, on the recommendations of the Council, and in supersession of the Government of Karnataka Notification (24/2019) No. FD 47 CSL 2017 dated 21st December, 2019 published in the Karnataka Gazette, Extraordinary, Part IV-A, No. 1080, dated 21st December, 2019, except as respects things done or omitted to be done

1. Karn. Gazette, Extry. Issue No. 15, Vol. 155, dated 9-4-2020, p. 1224.
2. See page 2 *supra*.
3. Karn. Gazette, Extry. Issue No. 15, Vol. 155, dated 9-4-2020, p. 1225.

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before such supersession, hereby notifies that an invoice issued by a registered person, whose aggregate turnover in a financial year exceeds five hundred crore rupees, other than those referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of said rules, and registered person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017, to an unregistered person (hereinafter referred to as B2C invoice), shall have Dynamic Quick Response (QR) Code :

Provided that where such registered person makes a Dynamic Quick Response (QR) Code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic Quick Response (QR) Code, shall be deemed to be having Quick Response (QR) Code.

2. This notification shall come into force from the 1st day of October, 2020.

Class of persons on whom sub-section (6B) or (6C) of section 25 not applicable (Karnataka)

Notification No. FD 03 CSL 2020 (9/2020), dated 2nd April, 2020[1]

In exercise of the powers conferred by sub-section (6D) of section 25 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017), the Government of Karnataka, on the recommendations of the Council, hereby notifies that the provisions of sub-section (6B) or sub-section (6C) of section 25 of the said Act shall not apply to a person who is not a citizen of India or to a class of persons other than the following class of persons, namely :—

(a) Individual ;

(b) Authorised signatory of all types ;

(c) Managing and authorised partner ; and

(d) Karta of an Hindu undivided family.

2. This notification shall come into effect from the 1st day of April, 2020.

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1. Karn. Gazette, Extry. issue No. 15, Vol. 155, dated 9-4-2020, p. 1226.

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Date of coming into force of notification under section 25(6B) (Karnataka)

Notification No. FD 03 CSL 2020 (10/2020), dated 2nd April, 2020[1]

In exercise of the powers conferred by sub-section (6B) of section 25 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017), the Government of Karnataka, on the recommendations of the Council, hereby notifies the date of coming into force of this notification as the date, from which an individual shall undergo authentication, of Aadhaar number, as specified in rule 8 of the Karnataka Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in order to be eligible for registration :

Provided that if Aadhaar number is not assigned to the said individual, he shall be offered alternate and viable means of identification in the manner specified in rule 9 of the said Rules.

2. This notification shall come into effect from the 1st day of April, 2020.

Date of coming into force of notification under section 25(6C) (Karnataka)

Notification No. FD 03 CSL 2020 (11/2020), dated 2nd April, 2020

In exercise of the powers conferred by sub-section (6C) of section 25 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017), the Government of Karnataka, on the recommendations of the Council, hereby notifies the date of coming into force of this notification as the date, from which the—

(a) authorised signatory of all types ;

(b) Managing and authorised partners of a partnership firm ; and

(c) Karta of an Hindu undivided family,

shall undergo authentication of possession of Aadhaar number, as specified in rule 8 of the Karnataka Goods and Services Tax Rules, 2017 (hereinafter referred to as the said Rules), in order to be eligible for registration under GST :

Provided that if Aadhaar number is not assigned to the said persons, they shall be offered alternate and viable means of identification in the manner specified in rule 9 of the said Rules.

2. This notification shall come into effect from the 1st day of April, 2020.

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1. Karn. Gazette, Extry. Issue No. 15, Vol. 155, dated 9-4-2020, p. 1227.

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Class of registered persons who shall follow certain special procedure for furnishing details of outward supply of goods or services or both (Karnataka)

Notification No. FD 03 CSL 2020 (12/2020), dated 2nd April, 2020[1]

In exercise of the powers conferred by section 148 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017) (hereafter in this notification referred to as the said Act), the Government of Karnataka, on the recommendations of the Council, hereby notifies the registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, as the class of registered persons who shall follow the special procedure as mentioned below for furnishing the details of outward supply of goods or services or both.

2. The said registered persons shall furnish the details of outward supply of goods or services or both in *Form GSTR-1* under the Karnataka Goods and Services Tax Rules, 2017, effected during the quarter as specified in column (2) of the Table below till the time period as specified in the corresponding entry in column (3) of the said table, namely :—

TABLE

Sl. No.	*Quarter for which details in Form GSTR-1 are furnished*	*Time period for furnishing details in Form GSTR-1*
(1)	*(2)*	*(3)*
1	April, 2020 to June, 2020	31st July, 2020
2	July, 2020 to September, 2020	31st October, 2020

3. The time-limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of April, 2020 to September, 2020 shall be subsequently notified in the Official Gazette.

Rate of interest for specified purposes—Amendment (Karnataka)

Notification No. FD 03 CSL 2020 (13/2020), dated 7th April, 2020[2]

In exercise of the powers conferred by sub-section (1) of section 50 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the Government of Karnataka, on the recommendations of the Council, hereby makes the following amendment in the Government of Karnataka Notification (13/2017) No. FD 47 CSL 2017,

1. Karn. Gazette, Extry. Issue No. 15, Vol. 155, dated 9-4-2020, p. 1228.
2. Karn. Gazette, Extry. No. 125, Part-IV-A, dated 7-4-2020.

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dated the 29th June, 2017, published in the Karnataka Gazette, Extraordinary, Part IV-A, No. 610, dated the 29th June, 2017, namely :—

In the said notification, in the first paragraph, the following provisos shall be *inserted*, namely :—

"Provided that, the rate of interest per annum shall be as specified in column (3) of the Table given below, for the class of registered persons, mentioned in the corresponding entry in column (2) of the said table, who are required to furnish the returns in Form GSTR-3B, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry in column (4) of the said Table by the due date, but furnish the said return according to the condition mentioned in the corresponding entry in column (5) of the said Table, namely :—

TABLE

Sl. No.	*Class of registered persons*	*Rate of interest*	*Tax period*	*Condition*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
1.	Taxpayers having an aggregate turnover of more than Rs. 5 crores in the preceding financial year	Nil for first 15 days from the due date, and 9 per cent. thereafter	February, 2020, March 2020, April, 2020	If return in *FORM GSTR-3B* is furnished on or before the 24th day of June, 2020
2	Taxpayers having an aggregate turnover of more than Rs. 1.5 crores and up to rupees five crores in the preceding financial year	Nil	February, 2020, March, 2020	If return in *FORM GSTR-3B* is furnished on or before the 29th day of June, 2020
			April, 2020	If return in *FORM GSTR-3B* is furnished on or before the 30th day of June, 2020
3.	Taxpayers having an aggregate turnover of up to Rs. 1.5 crores in the preceding financial year	Nil	February, 2020	If return in *FORM GSTR-3B* is furnished on or before the 30th day of June, 2020
			March, 2020	If return in *FORM GSTR-3B* is furnished on or before the 3rd day of July, 2020
			April, 2020	If return in *FORM GSTR-3B* is furnished on or before the 6th day of July, 2020.".

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2. This notification shall be deemed to have come into force with effect from the 20th day of March, 2020.

Waiver of late fee for filing of Form GSTR-3B— Amendment (Karnataka)

Notification No. FD 03 CSL 2020 (14/2020), dated 7th April, 2020[1]

In exercise of the powers conferred by section 128 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the Government, on the recommendations of the Council, hereby makes the following amendment in the Government of Karnataka Notification (29/2018) No. FD 47 CSL 2017, dated the 31st December, 2018, published in the Karnataka Gazette, Extraordinary, Part-IVA, No. 1553, dated the 31st December, 2018, namely :—

In the said notification, after the second proviso, the following proviso shall be *inserted*, namely :—

"Provided also that the amount of late fee payable under section 47 shall stand waived for the tax period as specified in column (3) of the Table given below, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who fail to furnish the returns in *Form GSTR-3B* by the due date, but furnishes the said return according to the condition mentioned in the corresponding entry in column (4) of the said table, namely :—

TABLE

Sl. No.	*Class of registered persons*	*Tax period*	*Condition*
(1)	*(2)*	*(3)*	*(4)*
1.	Taxpayers having an aggregate turnover of more than Rs. 5 crores in the preceding financial year	February, 2020, March, 2020 and April, 2020	If return in *Form GSTR-3B* is furnished on or before the 24th day of June, 2020
2	Taxpayers having an aggregate turnover of more than Rs. 1.5 crores and up to Rs. 5 crores in the preceding financial year	February, 2020 and March, 2020	If return in *Form GSTR-3B* is furnished on or before the 29th day of June, 2020
		April, 2020	If return in *Form GSTR-3B* is furnished on or before the 30th day of June, 2020

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1. Karn. Gazette, Extry. No. 126, Part-IVA, dated 7-4-2020.

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3.	Taxpayers having an aggregate turnover of up to Rs. 1.5 crores in the preceding financial year	February, 2020	If return in *Form GSTR-3B* is furnished on or before the 30th day of June, 2020
		March, 2020	If return in *Form GSTR-3B* is furnished on or before the 3rd day of July, 2020
		April, 2020	If return in *Form GSTR-3B* is furnished on or before the 6th day of July, 2020.".

2. This notification shall be deemed to have come into force with effect from the 20th day of March, 2020.

Failure to furnish return in Form GSTR-1—Waiver of late fee—Amendment (Karnataka)

Notification No. FD 03 CSL 2020 (15/2020), dated 7th April, 2020[1]

In exercise of the powers conferred by section 128 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the Government of Karnataka Notification (02/2018) No. FD 47 CSL 2018, dated the 23rd January, 2018, published in the Karnataka Gazette, Extraordinary, Part-IVA, No. 177, dated 23rd January, 2018, namely :—

In the said notification, after the third proviso, the following proviso shall be *inserted*, namely :—

"Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived for the months of March, 2020, April, 2020 and May, 2020, and for the quarter ending 31st March, 2020, for the registered persons who fail to furnish the details of outward supplies for the said periods in *Form GSTR-1* by the due date, but furnishes the said details in *Form GSTR-1*, on or before the 30th day of June, 2020.".

Class of registered persons who should follow the special procedure for furnishing of return and payment of tax—Amendment (Karnataka)

Notification No. FD 03 CSL 2020 (16/2020), dated 7th April, 2020[2]

In exercise of the powers conferred by section 148 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017), the Govern-

1. Karn. Gazette, Extry. No. 127, Part-IV-A, dated 7-4-2020.
2. Karn. Gazette, Extry. No. 128, Part-IV-A, dated 7-4-2020.

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ment, on the recommendations of the Council, hereby makes the following further amendments in the Government of Karnataka Notification (08/2019) No. FD 47 CSL 2017, dated 23rd April, 2019, published in the Karnataka Gazette, Extraordinary, Part-IVA, dated the 23rd April, 2019, namely :—

In the said notification,—

(i) in the second paragraph, the following proviso shall be *inserted*, namely :—

"Provided that the said persons shall furnish a statement, containing the details of payment of self-assessed tax in *Form GST CMP-08* of the Karnataka Goods and Services Tax Rules, 2017, for the quarter ending 31st March, 2020, till the 7th day of July, 2020." ;

(ii) in the third paragraph, the following proviso shall be *inserted*, namely :—

"Provided that the said persons shall furnish the return in Form GSTR-4 of the Karnataka Goods and Services Tax Rules, 2017, for the financial year ending 31st March, 2020, till the 15th day of July, 2020.".

Extension of time-limit for completion or compliance of any action by any authority (Karnataka)

Notification No. FD 03 CSL 2020 (17/2020), dated 20th April, 2020[1]

In exercise of the powers conferred by section 168A of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017) (hereafter in this notification referred to as the said Act), in view of the spread of pandemic COVID-19 across many countries of the world including India, the Government, on the recommendations of the Council, hereby notifies, as under :—

(i) where, any time-limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action, shall be extended up to the 30th day of June, 2020, including for the purposes of,—

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or Tribunal, by whatever name called, under the provisions of the Acts stated above ; or

1. Karn. Gazette, Extry. No. 140, Part-IV-A, dated 20-4-2020.

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(b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above ;

but, such extension of time shall not be applicable for the compliances of the provisions of the said Act, as mentioned below :

(a) Chapter IV ;

(b) sub-section (3) of section 10, sections 25, 27, 31, 37, 47, 50, 69, 90, 122, 129 ;

(c) section 39, except sub-sections (3), (4) and (5) ;

(d) section 68, in so far as e-way bill is concerned ; and

(e) rules made under the provisions specified at clauses (a) to (d) above ;

(ii) where an e-way bill has been generated under rule 138 of the Karnataka Goods and Services Tax Rules, 2017 and its period of validity expires during the period 20th day of March, 2020 to 15th day of April, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 30th day of April, 2020.

2. This notification shall be deemed to have come into force with effect from the 20th day of March, 2020.

Corporate debtors undergoing corporate insolvency resolution process—Special procedure—Amendments (Karnataka)

Notification No. FD 03 CSL 2020 (18/2020), dated 7th May, 2020[1]

In exercise of the powers conferred by section 148 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017), the Government, on the recommendations of the Council, hereby makes the following amendments in the Government of Karnataka Notification (05/2020) No. FD 03 CSL 2020, dated the 27st March, 2020[2], published in the Karnataka Gazette, Part IVA, Volume 155, Issue 15, dated 9th April, 2020, namely :—

In the said notification,—

(i) in the first paragraph, the following proviso shall be *inserted*, namely :—

"Provided that the said class of persons shall not include those corporate debtors who have furnished the statements under section 37 and the returns under section 39 of the said Act for all the tax periods prior to the appointment of IRP/RP." ;

1. Karn. Gaz., Extry. No. 164, Part IV-A, dated 7-5-2020.
2. See page 3 *supra*.

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(ii) for the paragraph 2, with effect from the 21st March, 2020, the following paragraph shall be *substituted*, namely :—

"2. *Registration*.—The said class of persons shall, with effect from the date of appointment of IRP/RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration) in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP or by 30th June, 2020, whichever is later.".

Extension of time-limit for completion or compliance of any action by any authority—Amendments (Karnataka)

Notification No. FD 03 CSL 2020 (19/2020), dated 7th May, 2020[1]

In exercise of the powers conferred by section 168A of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017) (hereafter in this notification referred to as the said Act), the Government of Karnataka, on the recommendations of the Council, hereby makes the following amendment in the Government of Karnataka Notification (17/2020) No. FD 03 CSL 2020, dated 20th April, 2020[2], published in the Karnataka Gazette, Extraordinary, Part-IVA, No. 140, dated 20th April, 2020, namely :—

In the said notification, in the first paragraph, in clause (ii), the following proviso shall be inserted, namely :—

"Provided that where an e-way bill has been generated under rule 138 of the Karnataka Goods and Services Tax Rules, 2017 on or before the 24th day of March, 2020 and its period of validity expires during the period 20th day of March, 2020 to the 15th day of April, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 31st day of May, 2020.".

Notice has been issued for rejection of refund claim, in full or in part and where the time-limit for issuance of order in terms of the provisions (Karnataka)

Notification No. FD 03 CSL 2020 (20/2020), dated 16th June, 2020[3]

In exercise of the powers conferred by section 168A of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017) (hereafter in

1. Karn. Gazette, Extry. No. 165, Part-IV-A, dated 7-5-2020.
2. See page 12 *supra*.
3. Karn. Gazette, Extry. No. 203, Part-IV-A, dated 16-6-2020.

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this notification referred to as the said Act), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), in view of the spread of pandemic COVID-19 across many countries of the world including India, the Government of Karnataka, on the recommendations of the Council, hereby notifies that in cases where a notice has been issued for rejection of refund claim, in full or in part and where the time limit for issuance of order in terms of the provisions of sub-section (5), read with sub-section (7) of section 54 of the said Act falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, in such cases the time limit for issuance of the said order shall be extended to fifteen days after the receipt of reply to the notice from the registered person or the 30th day of June, 2020, whichever is later.

2. This notification shall come into force with effect from the 20th day of March, 2020.

Extension of time-limit for completion or compliance of any action by any authority—Amendment (Karnataka)

Notification No. FD 03 CSL 2020 (21/2020), dated 16th June, 2020[1]

In exercise of the powers conferred by section 168A of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017) (hereafter in this notification referred to as the said Act), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Government of Karnataka, on the recommendations of the Council, hereby makes the following further amendment in the Government of Karnataka Notification (17/2020) No. FD 03 CSL 2020, dated April 20, 2020[2] published in the Karnataka Gazette, Extraordinary, Part IV-A, No. 140, dated 20th April, 2020, namely :—

In the said notification, in the first paragraph, in clause (ii), for the proviso, the following proviso shall be *substituted*, namely :—

"Provided that where an e-way bill has been generated under rule 138 of the Karnataka Goods and Services Tax Rules, 2017 on or before the 24th day of March, 2020 and whose validity has expired on or after the 20th March, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 30st day of June, 2020.".

2. This notification shall come into force with effect from the 31st day of May, 2020.

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1. Karn. Gazette, Extry. No. 204, Part-IV-A, dated 16-6-2020.
2. See page 12 *supra*.

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Rate of interest for specified purposes—Amendment (Karnataka)

Notification No. FD 03 CSL 2020 (22/2020), dated 30th June, 2020[1]

In exercise of the powers conferred by sub-section (1) of section 50 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017) read with section 148 of the said Act, the Government of Karnataka, on the recommendations of the Council, hereby makes the following further amendment in Government of Karnataka Notification (13/2017) No. FD 47 CSL 2017, dated 29th June, 2017, published in Karnataka Gazette, Extraordinary, Part-IV-A, No. 610, dated the 29th June, 2017, namely :—

In the said notification, in the first paragraph, for the first proviso, the following proviso shall be *substituted*, namely :—

"Provided that the rate of interest per annum shall be as specified in column (3) of the Table given below for the period mentioned therein, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who are required to furnish the returns in Form GSTR-3B, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry in column (4) of the said Table by the due date, namely :—

TABLE

Sl. No.	*Class of registered persons*	*Rate of interest*	*Tax period*
(1)	*(2)*	*(3)*	*(4)*
1.	Taxpayers having an aggregate turnover of more than Rs. 5 crores in the preceding financial year	Nil for first 15 days from the due date, and 9 per cent. thereafter till 24th day of June, 2020	February, 2020, March 2020, April, 2020
2.	Taxpayers having an aggregate turnover of up to Rs. 5 crores in the preceding financial year.	Nil till the 30th day of June, 2020, and 9 per cent. thereafter till the 30th day of September, 2020	February, 2020
		Nil till the 3rd day of July, 2020, and 9 per cent. thereafter till the 30th day of September, 2020	March, 2020
		Nil till the 6th day of July, 2020, and 9 per cent. thereafter till the 30th day of September, 2020	April, 2020

1. Karn. Gazette, Extry. No. 266, Part-IVA, dated 30-6-2020.

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(1)	(2)	(3)	(4)
		Nil till the 12th day of September, 2020, and 9 per cent. thereafter till the 30th day of September, 2020	May, 2020
		Nil till the 23rd day of September, 2020, and 9 per cent. thereafter till the 30th day of September, 2020	June, 2020
		Nil till the 27th day of September, 2020, and 9 per cent. thereafter till the 30th day of September, 2020	July, 2020

Waiver of late fee for filing of Form GSTR-3B—Amendments (Karnataka)

Notification No. FD 03 CSL 2020 (23/2020), dated 30th June, 2020[1]

In exercise of the powers conferred by section 128 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the Government of Karnataka, on the recommendations of the Council, hereby makes the following further amendments in the Government of Karnataka Notification (29/2018) No. FD 47 CSL 2017 dated the 31st December, 2018, published in the Karnataka Gazette, Extraordinary, Part IV-A, No. 1553, dated the 31st December, 2018, namely :—

In the said notification,—

(i) in the third proviso, for the Table, the following Table shall be *substituted*, namely :—

"TABLE

Sl. No.	*Class of registered persons*	*Tax period*	*Condition*
(1)	(2)	(3)	(4)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	February, 2020, March, 2020 and April, 2020	If return in Form GSTR-3B is furnished on or before the 24th day of June, 2020

1. Karn. Gazette, Extry. No. 267, Part-IVA, dated 30-6-2020.

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(1)	(2)	(3)	(4)
2.	Taxpayers having an aggregate turnover of up to Rs. 5 crores in the preceding financial year.	February, 2020	If return in FORM GSTR-3B is furnished on or before the 30th day of June, 2020
		March, 2020	If return in FORM GSTR-3B is furnished on or before the 3rd day of July, 2020
		April, 2020	If return in FORM GSTR-3B is furnished on or before the 6th day of July, 2020
		May, 2020	If return in FORM GSTR-3B is furnished on or before the 12th day of September, 2020
		June, 2020	If return in FORM GSTR-3B is furnished on or before the 23rd day of September, 2020
		July, 2020	If return in FORM GSTR-3B is furnished on or before the 27th day of September, 2020

(ii) after the third proviso, the following provisos shall be *inserted*, namely :—

"Provided also that the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived which is in excess of an amount of two hundred and fifty rupees for the registered person who failed to furnish the return in Form GSTR-3B for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 1st day of July, 2020 to 30th day of September, 2020 :

Provided also that where the total amount of Central tax payable in the said return is nil, the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived for the registered person who failed to furnish the return in Form GSTR-3B for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 1st day of July, 2020 to 30th day of September, 2020.".

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**Failure to furnish return in Form GSTR-1—
Waiver of late fee—Amendment (Karnataka)**

Notification No. FD 03 CSL 2020 (24/2020), dated 30th June, 2020[1]

In exercise of the powers conferred by section 128 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017), the Government of Karnataka, on the recommendations of the Council, hereby makes the following further amendment in the Government of Karnataka Notification (02/2018) No. FD 47 CSL 2017, dated the 23rd January, 2018, published in the Karnataka Gazette, Extraordinary, Part IV-A, No. 177, dated the 23rd January, 2018, namely :—

In the said notification, for the third proviso, the following proviso shall be *substituted*, namely :—

"Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived for the registered persons who fail to furnish the details of outward supplies for the months or quarter mentioned in column (2) of the Table below in Form GSTR-1 by the due date, but furnishes the said details on or before the dates mentioned in column (3) of the said table :—

TABLE

Sl. No.	*Month/Quarter*	*Dates*
(1)	*(2)*	*(3)*
1.	March, 2020	10th day of July, 2020
2.	April, 2020	24th day of July, 2020
3.	May, 2020	28th day of July, 2020
4.	June, 2020	5th day of August, 2020
5.	January to March, 2020	17th day of July, 2020
6.	April to June, 2020	3rd day of August, 2020.".

**Extension of time-limit for completion or compliance of
any action by any authority—Amendment (Karnataka)**

Notification No. FD 03 CSL 2020 (25/2020), dated 6th July, 2020[2]

In exercise of the powers conferred by section 168A of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017), the Government of Karnataka, on the recommendations of the Council, hereby makes the following further amendment in the Government of Karnataka Notifi-

1. Karn. Gazette, Extry. No. 268, Part-IV-A, dated 30-6-2020.
2. Karn. Gazette, Extry. No. 281, Part-IV-A, dated 6-7-2020.

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cation (17/2020) No. FD 03 CSL 2020, dated April 20, 2020[1] dated the 20th April, 2020, published in the Karnataka Gazette, Extraordinary, Part IVA, No. 140, dated the 20th April, 2020, namely :—

In the said notification, in the first paragraph, in clause (i),—

(i) for the words, figures and letters "29th day of June, 2020", the words, figures and letters "30th day of August, 2020" shall be *substituted* ;

(ii) for the words, figures and letters "30th day of June, 2020", the words, figures and letters "31st day of August, 2020" shall be *substituted*.

Notice has been issued for rejection of refund claim, in full or in part and where the time-limit for issuance of order in terms of the provisions—Amendment (Karnataka)

Notification No. FD 03 CSL 2020 (26/2020), dated 6th July, 2020[2]

In exercise of the powers conferred by section 168A of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017), the Government, on the recommendations of the Council, hereby makes the following amendment in the Government of Karnataka Notification (20/2020) No. FD 03 CSL 2020, dated the 16th June, 2020[3], published in the Karnataka Gazette, Extraordinary, Part IVA, No. 203, dated 16th June, 2020, namely :—

In the said notification, in the first paragraph,—

(i) for the words, figures and letters "29th day of June, 2020", the words, figures and letters "30th day of August, 2020" shall be *substituted* ;

(ii) for the words, figures and letters "30th day of June, 2020", the words, figures and letters "31st day of August, 2020" shall be *substituted*.

Waiver of late fee for filing of Form GSTR-3B—Amendments (Karnataka)

Notification No. FD 03 CSL 2020 (27/2020), dated 16th July, 2020[4]

In exercise of the powers conferred by section 128 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the Government of Karnataka, on the recommendations of the

1. See page 12 *supra*.
2. Karn. Gazette, Extry. No. 282, Part IV-A, dated 6-7-2020.
3. See page 14 *supra*.
4. Karn. Gazette, Extry. Issue No. 29, Vol. 155, dated 16-7-2020, page 2351.

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Council, hereby makes the following further amendments in the Government of Karnataka Notification (29/2018) No. FD 47 CSL 2017, dated 31st December, 2018, published in the Karnataka Gazette, Extraordinary, Part IVA, No. 1553, dated 31st December, 2018, namely :—

In the said notification, after the third proviso, the following provisos shall be *inserted*, namely :—

"Provided also that for the class of registered persons mentioned in column (2) of the Table of the above proviso, who fail to furnish the returns for the tax period as specified in column (3) of the said Table, according to the condition mentioned in the corresponding entry in column (4) of the said Table, but furnishes the said return till the 30th day of September, 2020, the total amount of late fee payable under section 47 of the said Act, shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived for those taxpayers where the total amount of Central tax payable in the said return is Nil :

Provided also that for the taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year, who fail to furnish the return in Form GSTR-3B for the months of May, 2020 to July, 2020, by the due date but furnish the said return till the 30th day of September, 2020, the total amount of late fee under section 47 of the said Act, shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived for those taxpayers where the total amount of Central tax payable in the said return is Nil.".

2. This notification shall be deemed to have come into effect from the 1st day of July, 2020.

Failure to furnish return in Form GSTR-1—
Waiver of late fee—Amendment (Karnataka)

Notification No. FD 03 CSL 2020 (28/2020), dated 16th July, 2020[1]

In exercise of the powers conferred by section 148 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017), the Government of Karnataka, on the recommendations of the Council, hereby makes the following further amendment in the Government of Karnataka Notification (08/2019) No. FD 47 CSL 2017, dated 23rd April, 2019, published in the Karnataka Gazette, Extraordinary, Part IV-A, No. 322, dated 23rd April, 2019, namely :—

1. Karn. Gazette, Extry. Issue No. 29, Vol-155, dated 16-7-2020, page 2352.

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In the said notification, in the third paragraph, in the first proviso, for the figures, letters and words "15th day of July, 2020", the figures, letters and words "31st day of August, 2020" shall be *substituted*.

Class of registered person who shall prepare invoice and other prescribed documents in respect of supply of goods or services or both to a registered person—Amendment (Karnataka)

Notification No. FD 03 CSL 2020 (29/2020), dated 10th August, 2020[1]

In exercise of the powers conferred by sub-rule (4) of rule 48 of the Karnataka Goods and Services Tax Rules, 2017, the Government of Karnataka, on the recommendations of the Council, hereby makes the following amendments in the Government of Karnataka Notification (7/2020) No. FD 03 CSL 2020, dated the 27th March, 2020[2], published in the Karnataka Gazette, Extraordinary, Part IV-A, Vol. 155, Issue 15, No. 1225, dated the 9th April, 2020, namely :—

In the said notification, in the first paragraph,

(i) before the words "those referred to in sub-rules", the words "a Special Economic Zone unit and" shall be *inserted* ;

(ii) for the words "one hundred crore rupees", the words "five hundred crore rupees" shall be *substituted*.

CIRCULAR (Tamil Nadu)

Circular No. 31/(2018)/2019-TNGST, dated 5th April, 2019.

Subject: **Clarification regarding applicability of GST on the petroleum gases retained for the manufacture of petrochemical and chemical products—Regarding.**

Ref : **Circular No. 53/27/2018-GST, dated 9-8-2018[3] issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

References have been received regarding the applicability of GST on the petroleum gases retained for the manufacture of petrochemical and chemical products during the course of continuous supply, such as Methyl Ethyl Ketone (MEK) feedstock, petroleum gases, etc.

1. Karn. Gazette, Extry. No. 343, Part IV-A, dated 10-8-2020.
2. See page 5 *supra*.
3. See [2018] 56 GSTR (St.) 232.

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2. In this context, it may be recalled that clarifications on similar issues for specific products have been issued vide Circular Nos. 06/2017-TNGST dated March 28, 2019[1] and 17/2018-TNGST dated March 29, 2019[2]. These circulars apply mutatis mutandis to other cases involving same manner of supply as mentioned in these circulars. However, references have again been received from some of the manufacturers of other petrochemical and chemical products for issue of clarification on applicability of GST on petroleum gases, which are supplied by oil refineries to them on a continuous basis through dedicated pipelines, while a portion of the raw material is retained by these manufacturers (recipient of supply), and the remaining quantity is returned to the oil refineries. In this regard, an issue has arisen as to whether in this transaction GST would be leviable on the whole quantity of the principal raw materials supplied by the oil refinery or on the net quantity retained by the manufacturers of petrochemical and chemical products.

3. The GST Council in its 28th meeting held on July 21, 2018 discussed this issue and recommended for issuance of a general clarification for petroleum sector that in such transactions, GST will be payable by the refinery on the value of net quantity of petroleum gases retained for the manufacture of petrochemical and chemical products.

4. Accordingly, it is hereby clarified that, in the aforesaid cases, GST will be payable by the refinery only on the net quantity of petroleum gases retained by the recipient manufacturer for the manufacture of petrochemical and chemical products. Though, the refinery would be liable to pay GST on such returned quantity of petroleum gases, when the same is supplied by it to any other person. It is reiterated that this clarification would be applicable mutatis mutandis on other cases involving supply of goods, where feed stock is retained by the recipient and remaining residual material is returned back to the supplier. The net billing is done on the amount retained by the recipient.

5. This clarification is issued in the context of the Goods and Services Tax (GST) law only and past issues, if any, will be dealt in accordance with the law prevailing at the material time.

6. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

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1. See [2020] 78 GSTR (St.) 232.
2. See [2020] 78 GSTR (St.) 252.

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Circular No. 32/(2018)/2019-TNGST, dated 5th April, 2019.

Subject: **Classification of fertilizers supplied for use in the manufacture of other fertilizers at 5 per cent. GST rate—Regarding.**

Ref : **Circular No. 54/28/2018-GST, dated 9.8.2018[1] issued by the CBEC, Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

References have been received regarding a clarification as to whether simple fertilizers, such as MoP (Murate of Potash) classified under Chapter 31, and supplied for use in manufacturing of a complex fertilizer, are entitled to the concessional GST rate of five per cent., as applicable in general to fertilizers (i.e., fertilizers which are cleared to be used as fertilizers).

2.1 The matter has been examined. Chapter 31 of the Customs Tariff Act, 1975 covers fertilizers. The fertilizers are mostly used for increasing soil and land fertility, either directly, or by use in manufacturing of complex fertilizers. However, certain fertilizers and similar goods falling under this Chapter may be used for individual purposes like use of molten urea for manufacture of melamine and urea used in manufacturing of urea-formaldehyde resins or organic synthesis.

2.2 In the pre-GST regime, the concessional duty rate was prescribed for fertilizers falling under Chapter 31 of the Tariff (Notification No. 12/2012-Central Excise). This concessional rate was applied to goods falling under Chapter 31 which are clearly to be used directly as fertilizers or in the manufacture of other fertilizers, whether directly or through the stage of an intermediate product.

3. In the GST regime, tax structure on fertilizers has been prescribed on the lines of pre-GST tax incidence. The wording of the GST notification is similar to the central excise notification except certain changes to meet the requirements of GST. These changes were necessitated as GST is applicable on the supply of goods while central excise duty was applicable on manufacture of goods. Accordingly, fertilizers falling under heading 3102, 3103, 3104 and 3105, other than those which are clearly not to be used as fertilizers, attract five per cent. GST [Sl. No. 182A to 182D of the First Schedule to the Notification No. II(2)/CTR/532(d-4)/2017 dated 29th June 2017[2]]. However, the fertilizers items falling under the above mentioned headings, which are clearly not to be used as fertilizer attract 18 per cent. GST (Sl. No. 42 to 45 of the III Schedule to the Notification No. II(2)/CTR/

1. See [2018] 56 GSTR (St.) 233.
2. See [2017] 106 VST (St.) 96.

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532(d-4)/2017 dated 29th June, 2017[1]. The intention has been to provide concessional rate of GST to the fertilizers which are used directly as fertilizers or which are used in the manufacturing of complex fertilizers which are further used as soil or crop fertilizers. The phrase "*other than clearly to be used as fertilizers*" would not cover such fertilizers that are used for making complex fertilizers for use as soil or crop fertilizers.

4. Thus, it is clarified that the fertilizers supplied for direct use as fertilizers, or supplied for use in the manufacturing of other complex fertilizers for agricultural use (soil or crop fertilizers), will attract five per cent. IGST.

5. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 33/(2018)/2019-TNGST, dated 5th April, 2019.

Subject: **Taxability of service provided by Industrial Training Institutes (ITI)—Regarding.**

Ref : **Circular No. 55/29/2018-GST, dated 10.8.2018[2] issued by the CBEC, Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

Representations have been received requesting to clarify the following :

(a) Whether GST is payable on vocational training provided by private ITIs in designated trades and in other than designated trades.

(b) Whether GST is payable on the service, provided by a private industrial training institute for conduct of examination against consideration in the form of entrance fee and also on the services relating to admission to or conduct of examination.

2. With regard to the first issue, para 1(a) above, it is clarified that private ITIs qualify as an educational institution as defined under para 2(y) of Notification No. II(2)/CTR/532(d-15)/2017, dated June 29, 2017[3] if the education provided by these it is approved as vocational education course. The approved vocational educational course has been defined in para 2(h) of notification ibid to mean a course run by an ITI or an Industrial Training Centre affiliated to NCVT (National Council for Vocational Training) or SCVT

1. See [2017] 106 VST (St.) 96.
2. See [2018] 56 GSTR (St.) 234.
3. See [2017] 106 VST (St.) 248.

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(State Council for Vocational Training) offering courses in designated trade notified under the Apprenticeship Act, 1961 ; or a modular employable skill course, approved by NCVT, run by a person registered with DG Training in Ministry of Skill Development. Therefore, services provided by a private ITI in respect of designated trades notified under the Apprenticeship Act, 1961 are exempt from GST under Sl. No. 66 of Notification No. II(2)/CTR/532(d-15)/2017, dated June 29, 2017[1]. As corollary, services provided by a private ITI in respect of other than designated trades would be liable to pay GST and are not exempt.

3. With regard to the second issue, [para 1(b) above], it is clarified that in case of designated trades, services provided by a private ITI by way of conduct of entrance examination against consideration in the form of entrance fee will be exempt from GST [entry (aa) under Sl. No. 66 of Notification No. II(2)/CTR/532(d-15)/2017, dated June 29, 2017 refers]. Further, in respect of such designated trades, services provided to an educational institution, by way of, services relating to admission to or conduct of examination by a private ITI will also be exempt [entry (b(iv)) under Sl. No. 66 of Notification No. II(2)/CTR/532(d-15)/2017, dated June 29, 2017 refers]. It is further clarified that in case of other than designated trades in private ITIs, GST shall be payable on the service of conduct of examination against consideration in the form of entrance fee and also on the services relating to admission to or conduct of examination by such institutions, as these services are not covered by the exemption ibid.

4. As far as Government ITIs are concerned, services provided by a Government ITI to individual trainees/students, is exempt under Sl. No. 6 of Notification No. II(2)/CTR/532(d-15)/2017, dated June 29, 2017 as these are in the nature of services provided by the Central or State Government to individuals. Such exemption in relation to services provided by Government ITI would cover both—vocational training and examinations conducted by these Government ITIs.

5. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

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1. See [2017] 106 VST (St.) 248.

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Circular No. 34/(2018)/2019-TNGST, dated 5th April, 2019.

Subject: **Clarification regarding removal of restriction of refund of accumulated ITC on fabrics—Regarding.**

Ref : **Circular No. 56/30/2018-GST, dated 24-8-2018**[1] **issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

Certain doubts have been raised regarding the applicability and intent of Notification No. II(2)/CTR/662(a-8)/2018, dated July 26, 2018[2] (which seeks to amend Notification No. II(2)/CTR/532(d-8)/2017, dated June 29, 2017)[3] relating to the provision for lapsing of input tax credit accumulated on account of inverted duty structure on fabrics for the period up to the 31st July, 2018.

2. The said Notification No. II(2)/CTR/532(d-8)/2017, dated June 29, 2017 was issued in exercise of powers vested under section 54 of the Tamil Nadu Goods and Services Tax Act, 2017 (the TNGST Act, 2017). It notifies the items on which refund of accumulated input tax credit on account of inverted duty structure is not allowed. Some of the items notified under this notification are fabrics. Total 10 categories of fabrics covered in the notification are as follows :

Sl. No.	*Tariff Item, Heading, Sub-heading or Chapter*	*Description of goods*
(1)	*(2)*	*(3)*
1.	5007	Woven fabrics of silk or of silk waste
2.	5111 to 5113	Woven fabrics of wool or of animal hair
3.	5208 to 5212	Woven fabrics of cotton
4.	5309 to 5311	Woven fabrics of other vegetable textile fibres, paper yarn
5.	5407, 5408	Woven fabrics of manmade textile materials
6.	5512 to 5516	Woven fabrics of manmade staple fibres
6A[1]	5608	Knotted netting of twine, cordage or rope ; made up fishing nets and other made up nets, of textile materials
6B[2]	5801	Corduroy fabrics
6C[1]	5806	Narrow woven fabrics, other than goods of heading 5807 ; narrow fabrics consisting of warp without weft assembled by means of an adhesive
7.	60	Knitted or crocheted fabrics (all goods)

1. Inserted in the month of November 2017.
2. Inserted in the month of September 2017.

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1. See [2018] 56 GSTR (St.) 236.
2. See [2019] 64 GSTR (St.) 203.
3. See [2017] 106 VST (St.) 196.

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3. In the 28th GST Council meeting, it was decided to remove the restriction of not allowing refund of ITC accumulated on account of inverted duty structure on fabrics with prospective effect on the input supplies received after the date of issue of notification. It was also decided to simultaneously lapse the accumulated ITC, lying unutilized, for the past period, after the payment of GST for the month of July, 2018. Accordingly, to give effect to this decision, the Notification No. II(2)/CTR/662(a-8)/2018, dated July 2, 2018[1] has been issued amending Notification No. II(2)/CTR/532(d-8)/2017, dated June 29, 2017[2]. To keep the accounting simple, it was decided to make these changes effective from the 1st day of August, 2018.

4. Vide the said Notification No. II(2)/CTR/662(a-8)/2018, dated July 26, 2018, the following proviso has been inserted in Notification No. II(2)/CTR/532(d-8)/2017, dated June 29, 2017.

"Provided that,—

(i) nothing contained in this notification shall apply to the input tax credit accumulated on supplies received on or after the 1st day of August, 2018, in respect of goods mentioned at Serial Numbers 1, 2, 3, 4, 5, 6, 6A, 6B, 6C and 7 of the Table below ; and

(ii) in respect of said goods, the accumulated input-tax credit lying unutilised in balance, after payment of tax for and up to the month of July, 2018, on the inward supplies received up to the 31st day of July 2018, shall lapse.".

5. The doubts raised with reference to changes made vide Notification No. II(2)/CTR/662(a-8)/2018, dated July 26, 2018[1] are as follows :

(1) Whether this notification seeks to lapse all the input tax credit lying unutilised after payment of tax up to the month of July, 2018 ?

(2) Whether unutilised ITC in respect of services and capital goods shall also be disallowed ?

(3) Implication to fabrics like cotton and silk where there was no inverted duty structure ?

(4) Whether accumulated ITC in respect of exports shall also be made to lapse ?

6. The matter has been examined. Section 54 of the TNGST Act, 2017 provides for refund of accumulated credit on inputs on account of inverted duty structure, i. e., GST rate on inputs being higher than the GST rates on finished goods. However, proviso (ii) to section 54(3) provides that in respect of notified goods, the refund of such accumulated input tax credit

1. See [2019] 64 GSTR (St.) 203.
2. See [2017] 106 VST (St.) 196.

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shall not be allowed. Notification No. II(2)/CTR/532(d-8)/2017, dated July 29, 2017[1] has been issued in terms of this provision and it inter-alia prescribes that refund of accumulated ITC on account of inverted duty structure shall not be allowed in respect of fabrics as mentioned in para 2. Therefore, the restriction of refund of accumulated ITC under Notification No. II(2)/CTR/532(d-8)/2017, dated June 29, 2017[1] is applicable only in respect of refund of accumulated ITC on inputs. This notification does not put any restriction in relation to the ITC on input services and capital goods.

7. The proviso has to be read with the principal part of the notification. A comprehensive reading of amended notification makes it clear that the proviso seeks to lapse only such input tax credit which is the subject matter of principal notification, i.e., accumulated credit on account of inverted duty structure in respect of stated fabrics. The net effect of clause (ii) in the said proviso is that it provides for lapsing of input tax credit that would have been refundable in terms of section 54 of the Act, for the period prior to the 31st July, 2018, but for the restriction imposed vide said Notification No. II(2)/CTR/532(d-8)/2017, dated July 29, 2017[1] and that too to the extent of accumulated ITC lying unutilized after making payment of GST up to the month of July, 2018. In other words, in terms of amended notification, the input tax credit on account of inverted duty structure lying in balance after payment of GST for the month of July (on purchases made on or before the 31st July, 2018) shall lapse.

8. As the Notification No. II(2)/CTR/532(d-8)/2017, dated June 29, 2017[1] does not put any restriction in respect of ITC on input services and capital goods, therefore the proviso now inserted in the said Notification No. II(2)/CTR/532(d-8)/2017, dated June 29, 2017[1] vide Notification No. II(2)/CTR/662(a-8)/2018, dated July 26, 2018[2] does not affect the ITC availed on input tax services and capital goods.

9. As regards, the legislative power of providing for lapsing of input-tax credit, the same flows inherently from the power to deny refund of accumulated ITC on account of inverted structure.

10. Doubts have also been raised as regards the manner of calculating the ITC amount accumulated on account of inverted duty structure on the inputs of said fabrics that would lapse on account of above stated change. It is clarified that for determination of such amount, the formula as prescribed in rule 89(5) of the TNGST rules shall mutatis mutandis apply as it applies for determination of refundable amount for inverted duty structure. Such amount shall be determined for the months from July, 2017 to July

1. See [2017] 106 VST (St.) 196.
2. See [2019] 64 GSTR (St.) 203.

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2018 or for the relevant period for such fabrics on which refund was blocked subsequently by inserting entries in Notification No. II(2)/CTR/532(d-8)/2017, dated June 29, 2017[1]. The accumulated input tax credit determined by each supplier using the prescribed formula lying unutilized in balance after making the payment of GST for the month of July, 2018 shall lapse.

Illustrations :

(1) A manufacturer who produces only manmade fibre fabrics, had a turnover of Rs. 5 crore for the period from July, 2017 to July 2018 [or for the relevant period for fabrics on which refund was blocked subsequently by inserting entries in Notification No. II(2)/CTR/532(d-8)/2017, dated June 29, 2017[1]]. Tax payable thereon is Rs .25 lakh at five per cent. Assuming the net ITC availed on inputs, during this period, was Rs. 30 lakh.

(2) Applying the formula prescribed in rule 89(5), the accumulated ITC on account of inverted duty structure comes to Rs. 5 lakh. In other words, this manufacturer has accumulated Rs. 5 lakh on inputs on account of inverted duty structure during the said period. If ITC balance lying unutilized with him is more than this amount, say Rs. 10 lakh, the ITC equal to Rs. 5 lakh will only lapse. However, if for any reason, the ITC balance lying unutilized is less than Rs. 5 lakh, say Rs. 3 lakh, and the ITC equal to Rs. 3 lakh will lapse.

(3) A manufacture who produce, say, grey manmade fibre fabrics and cotton fabrics, had a turnover of Rs. 5 crore and Rs. 2 crore respectively for manmade fabrics and cotton fabrics for the months from July, 2017 to July 2018 or for the relevant period for fabrics on which refund was blocked subsequently by inserting entries in Notification No. II(2)/CTR/532(d-8)/2017, dated June 29, 2017[1]. Tax payable thereon is Rs. 25 lakh on MMF fabrics and Rs. 10 lakh on cotton fabrics. MMF fabric has inverted duty structure while cotton fabric does not have inverted duty structure. Assuming the net ITC availed on inputs, during this period, was Rs. 35 lakh i.e.,—

= {(Turnover of inverted rated supply of goods ÷ Adjusted total turnover) × Net ITC} – Tax payable on such inverted rated supply of goods.

The accumulated ITC on account of inverted duty structure shall be equal to nil (5/7 × 35–25). Thus no amount shall lapse. However, assuming that in this case the ITC availed on input is Rs. 42 lakh, the accumulated ITC on accounted on inverted duty structure is Rs. 5 lakh (5/7 × 42–25).

The manner of calculation as provided in rule 89(5) would mutatis mutandis apply.

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1. See [2017] 106 VST (St.) 196.

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10.1 As illustrated, the application of formula prescribed in rule 89(5) ensures that ITC relating to capital goods and input services does not lapse.

11. However, a manufacturer may have closing stock of finished goods and inputs as on July 31, 2018. A doubt has been raised as to whether input tax relating thereto shall also lapse and concern has been expressed that this would amount to double taxation. It is clarified that the proposed amendment seeks to lapse only such credit that has been accumulated on inputs on account of inverted duty structure. Therefore, in case a manufacturer, whose accumulated ITC is liable to lapse in terms of said notification, has certain stock lying in balance as on July 31, 2018, the input tax credit involved in inputs contained in such stock (including inputs lying as such) may be excluded for determination of Net ITC for the purposes of applying the said formula. For this purpose, the ITC relating to inputs contained in stock may be determined in the manner as provided in Sl. No. 7 of Form GST ITC-01.

12. As regards the applicability of said proviso to cotton, silk and other natural fibre fabrics, which do not suffer inverted duty structure, this is clarified that the said condition of lapsing of ITC would apply only if input tax credit on inputs has been accumulated on account of inverted duty structure. The aforesaid formula takes care of this aspect.

13. As regarding accumulated ITC in relation to exports, the refund of such ITC on exports is separately determined under rule 89(4). Application of formula, as prescribed in rule 89(5), ensures that accumulated ITC on exports does not lapse as this formula excludes zero rated supplies. Further notification Notification No. II(2)/CTR/532(d-8)/2017, dated June 29, 2017[1] does not impose any restriction of refunds on zero rated supplies as was also clarified vide Circular No. 11/2017-TNGST, dated March 28, 2019[2]. Hence the proviso has no applicability to the input tax credit relating to zero rated supplies. Accordingly, accumulated ITC on zero rated supplies shall not lapse. This is ensured by application of formula.

14. The procedure to be followed for lapsing of accumulated input tax credit : A taxable person, whose input tax credit is liable to be lapsed in terms of said notification, shall calculate the amount of such accumulated ITC, in the manner as clarified above. This amount shall, upon self-assessment, be furnished by such person in his GSTR 3B return for the month of August, 2018. The amount shall be furnished in column 4B(2) of the return (ITC amount to be reversed for any reason (others)). Verification of accumulated ITC amount so lapsed may be done at the time of filing of first

1. See [2017] 106 VST (St.) 196.
2. See [2020] 78 GSTR (St.) 242.

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refund (on account of inverted duty structure on fabrics) by such person. Therefore, a detailed calculation sheet in respect of accumulated ITC lapsed shall be prepared by the taxable person and furnished at the time of filing of first refund claim on account of inverted duty structure.

15. Difficulty, if any, in the implementation of this circular should be brought to the notice of the Board.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 35(2018)/2019-TNGST, dated 5th April, 2019.

Subject: **Scope of principal-agent relationship in the context of Schedule I of the CGST Act—Regarding.**

Ref : **Circular No. 57/31/2018-GST, dated 4-9-2018**[1] **issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

In terms of Schedule I of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as the "TNGST Act"), the supply of goods by an agent on behalf of the principal without consideration has been deemed to be a supply. In this connection, various representations have been received regarding the scope and ambit of the principal agent relationship under GST. In order to clarify some of the issues and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Commissioner of State Tax, in exercise of his/her powers conferred under section 168 of the TNGST Act hereby clarifies the issues in the succeeding paras.

2. As per section 182 of the Indian Contract Act, 1872, an "agent" is a person employed to do any act for another, or to represent another in dealings with third person. The person for whom such act is done, or who is so represented, is called the "principal". As delineated in the definition, an agent can be appointed for performing any act on behalf of the principal which may or may not have the potential for representation on behalf of the principal. So, the crucial element here is the representative character of the agent which enables him to carry out activities on behalf of the principal.

3. The term "agent" has been defined under sub-section (5) of section 2 of the TNGST Act as follows :

"*agent*" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile

1. See [2018] 57 GSTR (St.) 1.

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agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

4. The following two key elements emerge from the above definition of agent :

(a) the term "agent" is defined in terms of the various activities being carried out by the person concerned in the principal-agent relationship ; and

(b) the supply or receipt of goods or services has to be undertaken by the agent on behalf of the principal.

From this, it can be deduced that the crucial component for covering a person within the ambit of the term "agent" under the TNGST Act is corresponding to the representative character identified in the definition of "agent" under the Indian Contract Act, 1872.

5. Further, the two limbs of any supply under GST are "consideration" and "in the course or furtherance of business". Where the consideration is not extant in a transaction, such a transaction does not fall within the ambit of supply. But, in certain scenarios, as elucidated in Schedule I of the TNGST Act, the key element of consideration is not required to be present for treating certain activities as supply. One such activity which has been detailed in para 3 of Schedule I (hereinafter referred to as "*the said entry*") is reproduced hereunder :

3. *Supply of goods—*

(a) *by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal ; or*

(b) *by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.*

6. Here also, it is worth noticing that all the activities between the principal and the agent and vice versa do not fall within the scope of the said entry. Firstly, the supply of services between the principal and the agent and vice versa is outside the ambit of the said entry, and would therefore require "consideration" to consider it as supply and thus, be liable to GST. Secondly, the element identified in the definition of "agent", i.e., "supply or receipt of goods on behalf of the principal" has been retained in this entry.

7. It may be noted that the crucial factor is how to determine whether the agent is wearing the representative hat and is supplying or receiving goods on behalf of the principal. Since in the commercial world, there are various factors that might influence this relationship, it would be more prudent that an objective criteria is used to determine whether a particular

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principal-agent relationship falls within the ambit of the said entry or not. Thus, the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the TNGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

8. Looking at the convergence point between the character of the agent under both the TNGST Act and the Indian Contract Act, 1872, the following scenarios are discussed :

Scenario 1 :

Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Mr. A, and asks the supplier (Mr. C) to send the goods and issue the invoice directly to Mr. A. In this scenario, Mr. B is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr. B is not an agent of Mr. A for supply of goods in terms of Schedule I.

Scenario 2 :

M/s. XYZ, a banking company, appoints Mr. B (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s. XYZ. The invoice for the supply of the goods is issued by M/s. XYZ to the successful bidder. In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mr. B is not an agent of M/s. XYZ for the supply of goods in terms of Schedule I.

Scenario 3 :

Mr. A, an artist, appoints M/s. B (auctioneer) to auction his painting. M/s. B arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by M/s. B on the behalf of

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Mr. A but in his own name and the painting is delivered to the successful bidder. In this scenario, M/s. B is not merely providing auctioneering services, but is also supplying the painting on behalf of Mr. A to the bidder, and has the authority to transfer the title of the painting on behalf of Mr. A. This scenario is covered under Schedule I. A similar situation can exist in case of supply of goods as well where the C & F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C & F/commission agent is an agent of the principal for the supply of goods in terms of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.

Scenario 4 :

Mr. A sells agricultural produce by utilizing the services of Mr. B who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Mr. B identifies the buyers and sells the agricultural produce on behalf of Mr. A for which he charges a commission from Mr. A. As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.

In cases where the invoice is issued by Mr. B to the buyer, the former is an agent covered under Schedule I. However, in cases where the invoice is issued directly by Mr. A to the buyer, the commission agent (Mr. B) doesn't fall under the category of agent covered under Schedule I.

9. In scenario 1 and scenario 2, Mr. B shall not be liable to obtain registration in terms of clause (vii) of section 24 of the TNGST Act. He, however, would be liable for registration if his aggregate turnover of supply of taxable services exceeds the threshold specified in subsection (1) of section 22 of the TNGST Act. In scenario 3, M/s. B shall be liable for compulsory registration in terms of the clause (vii) of section 24 of the TNGST Act. In respect of commission agents in Scenario 4, Notification No. II(2)/CTR/532(d-15)/2017 dated 29th June 2017[1] has exempted "services by any APMC or board or services provided by the commission agents for sale or purchase of agricultural produce" from GST. Thus, the "services" provided by the commission agent for sale or purchase of agricultural produce is exempted. Such commission agents (even when they qualify as agent under Schedule I) are not liable to be registered according to sub-clause (a) of sub-section (1) of section 23 of the TNGST Act, if the supply of the agri-

1. See [2017] 106 VST (St.) 248.

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cultural produce, and/or other goods or services supplied by them are not liable to tax or wholly exempt under GST. However, in cases where the supply of agricultural produce is not exempted and liable to tax, such commission agent shall be liable for compulsory registration under sub-section (vii) of section 24 of the TNGST Act.

10. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 36(2018)/2019-TNGST, dated 5th April, 2019.

Subject: **Clarifications on recovery of arrears of wrongly availed CENVAT credit under the existing law and inadmissible transitional credit—Regarding.**

Ref : **Circular No. 58/32/2018-GST, dated 4-9-2018**[1] **issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

Various representations have been received seeking clarification on the process of recovery of arrears of wrongly availed Cenvat credit under the existing law and Cenvat credit wrongly carried forward as transitional credit in the GST regime. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168 of the Tamilnadu Goods and Services Tax Act, 2017 (hereinafter referred to as the "TNGST Act"), hereby specifies the process of recovery of the said arrears and inadmissible transitional credit in the succeeding paragraphs.

2. The Commissioner of State Taxes vide Circular No. 24/2018-TNGST, dated March 29, 2019[2], has clarified that the recovery of arrears arising under the existing law shall be made as central tax liability to be paid through the utilization of the amount available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register *(FORM GST PMT-01)*.

3. Currently, the functionality to record this liability in the electronic liability register is not available on the common portal. Therefore, it is clarified that as an alternative method, taxpayers may reverse the wrongly

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1. See [2018] 57 GSTR (St.) 5.
2. See [2020] 78 GSTR (St.) 265.

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availed CENVAT credit under the existing law and inadmissible transitional credit through table 4(B)(2) of *Form GSTR-3B*. The applicable interest and penalty shall apply on all such reversals which shall be paid through entry in column 9 of Table 6.1 of *Form GSTR-3B*.

4. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 37(2018)/2019-TNGST, dated 5th April, 2019.

Subject: **Clarification on refund related issues—Regarding.**

Ref : **Circular No. 59/33/2018-GST, dated 4-9-2018[1] issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

Various representations have been received seeking clarification on issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 of the Tamilnadu Goods and Services Tax Act, 2017 (hereinafter referred to as "TNGST Act"), hereby clarifies the issues as detailed hereunder :

2. *Submission of invoices for processing of claims of refund* :

2.1 It was clarified vide Circular No. 4/2018-TNGST, dated March 27, 2018[2] that since the refund claims were being filed in a semi-electronic environment and the processing was completely based on the information provided by the claimants, it becomes necessary that invoices are scrutinized.

Accordingly, it was clarified that the invoices relating to inputs, input services and capital goods were to be submitted for processing of claims for refund of integrated tax where services are exported with payment of integrated tax ; and invoices relating to inputs and input services were to be submitted for processing of claims for refund of input tax credit where goods or services are exported without payment of integrated tax.

2.2. In this regard, trade and industry have represented that such requirement is cumbersome and increases their compliance cost, especially where the number of invoices is large.

1. See [2018] 57 GSTR (St.) 110.
2. See [2018] 52 GSTR (St.) 134.

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2.3. In view of the difficulties being faced by the claimants of refund, it has been decided that the refund claim shall be accompanied by a print-out of *Form GSTR-2A* of the claimant for the relevant period for which the refund is claimed. The proper officer shall rely upon *Form GSTR-2A* as an evidence of the accountal of the supply by the corresponding supplier in relation to which the input-tax credit has been availed by the claimant. It may be noted that there may be situations in which *Form GSTR-2A* may not contain the details of all the invoices relating to the input-tax credit availed, possibly because the supplier's *Form GSTR-1* was delayed or not filed. In such situations, the proper officer may call for the hard copies of such invoices if he deems it necessary for the examination of the claim for refund. *It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are present in Form GSTR-2A of the relevant period submitted by the claimant*.

2.4. The claimant shall also submit the details of the invoices on the basis of which input tax credit had been availed during the relevant period for which the refund is being claimed, in the format enclosed as *annexure-A* manually along with the application for refund claim in *Form GST RFD-01A* and the Application Reference Number (ARN). The claimant shall also declare the eligibility or otherwise of the input tax credit availed against the invoices related to the claim period in the said annexure for enabling the proper officer to determine the same.

3. *System validations in calculating refund amount :*

3.1. Currently, in case of refund of unutilized input-tax credit (ITC for short), the common portal calculates the refundable amount as the least of the following amounts :

(a) The maximum refund amount as per the formula in rule 89(4) or rule 89(5) of the Tamilnadu Goods and Services Tax Rules, 2017 (hereinafter referred to as "the TNGST Rules") [formula is applied on the consolidated amount of ITC, i.e., Central tax + State tax/Union Territory tax + Integrated tax + Cess (wherever applicable)] ;

(b) The balance in the electronic credit ledger of the claimant at the end of the tax period for which the refund claim is being filed after the return for the said period has been filed ; and

(c) The balance in the electronic credit ledger of the claimant at the time of filing the refund application.

3.2. After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the claimant in the following order :

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(a) Integrated tax, to the extent of balance available ;

(b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case).

3.3. The procedure described in para 3.2 above, however, is not presently available on the common portal. Till the time such facility is made available on the common portal, the taxpayers are advised to follow the order as explained above for all refund applications filed after the date of issue of this circular. However, for applications already filed and pending with the tax authorities, where this order is not adhered to by the claimant, no adverse view may be taken by the tax authorities.

3.4. The above system validations are being clarified so that there is no ambiguity in relation to the process through which an application in *Form GST RFD-01A* is generated.

3.5. Further, it may be noted that the refund application can be filed only after the electronic credit ledger has been debited in the manner specified in para 3.2 (read with para 3.3) above, and the ARN is generated on the common portal.

4. *Re-credit of electronic credit ledger in case of rejection of refund claim* :

4.1. In case of rejection of claim for refund of unutilized input tax credit on account of ineligibility of the said credit under sub-sections (1),(2) or (5) of section 17 of the TNGST Act, or under any other provision of the Act and rules made thereunder the proper officer shall order for the rejected amount to be re-credited to the electronic credit ledger of the claimant using *FORM GST RFD-01B*. For recovery of this amount, a demand notice shall have to be simultaneously issued to the claimant under section 73 or 74 of the TNGST Act, as the case may be. In case the demand is confirmed by an order issued under sub-section (9) of section 73, or sub-section (9) of section 74 of the TNGST Act, as the case may be, the said amount shall be added to the electronic liability register of the claimant through *Form GST DRC-07*. Alternatively, the claimant can voluntarily pay this amount, along with interest and penalty, if applicable, before service of the demand notice, and intimate the same to the proper officer in *Form GST DRC-03* in accordance with sub-section (5) of section 73 or sub-section (5) of section 74 of the TNGST Act, as the case may be, read with sub-rule (2) of rule 142 of the TNGST Rules. In such cases, the need for serving a demand notice will be obviated.

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4.2. In case of rejection of claim for refund of unutilized input tax credit, on account of any reason other than the eligibility of credit, the rejected amount shall be re-credited to the electronic credit ledger of the claimant using *Form GST RFD-01B* only after the receipt of an undertaking from the claimant to the effect that he shall not file an appeal against the said rejection or in case he files an appeal, the same is finally decided against the claimant, as has been laid down in rule 93 of the TNGST Rules.

4.3. Consider an example where against a refund claim of Rs. 100, only Rs. 80 is sanctioned (Rs. 15 is rejected on account of ineligible ITC and Rs. 5 is rejected on account of any other reason). As described above, Rs. 15 would be re-credited with simultaneous issue of notice under section 73 or 74 of the TNGST Act for recovery of ineligible ITC. Rs. 5 would be re-credited (through *Form GST RFD-01B*) only after the receipt of an undertaking from the claimant to the effect that he shall not file an appeal or in case he files an appeal, the same is finally decided against the claimant.

5. *Scope of rule 96(10) of the TNGST Rules* :

5.1 Rule 96(10) of the TNGST Rules, as amended retrospectively by TNGST G. O. (Ms) No. 112, dated September 4, 2018 provides that registered persons, including importers, who are *directly purchasing/importing supplies* on which the benefit of reduced tax incidence or no tax incidence under certain specified notifications has been availed, shall not be eligible for refund of integrated tax paid on export of goods or services. For example, an importer (X) who is importing goods under the benefit of Advance Authorization/EPCG, is *directly purchasing/importing supplies* on which the benefit of reduced/Nil incidence of tax under the specified notifications has been availed. In this case, the restriction under rule 96(10) of the TNGST Rules is applicable to X. However, if X supplies the said goods, after importation, to a domestic buyer (Y), *on payment of full tax*, then Y can rightfully export these goods under payment of integrated tax and claim refund of the integrated tax so paid. However, in the said example if Y purchases these goods from X after availing the benefit of specified notifications, then Y also will not be eligible to claim refund of integrated tax paid on export of goods or services.

5.2 Overall, it is clarified that the restriction under rule 96(10) of the TNGST Rules, as amended retrospectively by TNGST G. O. (Ms) No. 112, dated September 4, 2018, applies only to those purchasers/importers who are directly purchasing/importing supplies on which the benefit of certain notifications, as specified in the said sub-rule, has been availed.

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6. *Disbursal of refund amount after sanctioning by the proper officer* :

6.1 A few cases have come to notice where a tax authority, after receiving a sanction order from the counterpart tax authority (Centre or State), has refused to disburse the relevant sanctioned amount calling into question the validity of the sanction order on certain grounds. E.g., a tax officer of one administration has sanctioned, on a provisional basis, 90 per cent. of the amount claimed in a refund application for unutilized ITC on account of exports. On receipt of the provisional sanction order, the tax officer of the counterpart administration has observed that the provisional refund of input tax credit has been incorrectly sanctioned for ineligible input tax credit and has therefore, refused to disburse the tax amount pertaining to the same.

6.2 It is clarified that the remedy for correction of an incorrect or erroneous sanction order lies in filing an appeal against such order and not in withholding of the disbursement of the sanctioned amount. If any discrepancy is noticed by the disbursing authority, the same should be brought to the notice of the counterpart refund sanctioning authority, the concerned counterpart reviewing authority and the nodal officer, but the disbursal of the refund should not be withheld. It is hereby clarified that neither the State nor the Central tax authorities shall refuse to disburse the amount sanctioned by the counterpart tax authority on any grounds whatsoever, except under sub-section (11) of section 54 of the TNGST Act. It is further clarified that any adjustment of the amount sanctioned as refund against any outstanding demand against the claimant can be carried out by the refund disbursing authority if not already done by the refund sanctioning authority.

7. *Status of refund claim after issuance of deficiency memo* :

7.1 Rule 90(3) of the TNGST Rules provides that where any deficiencies in the application for refund are noticed, the proper officer shall communicate the deficiencies to the claimant in *Form GST RFD-03*, requiring him to file a fresh refund application after rectification of such deficiencies. Further, rule 93(1) of the TNGST Rules provides that where any deficiencies have been communicated under rule 90(3), the amount debited under rule 89(3) shall be re-credited to the electronic credit ledger. Therefore, the intent of the law is very clear that in case a deficiency memo in *Form GST RFD-03* has been issued, the refund claim will have to be filed afresh.

7.2 It has been learnt that certain field formations are issuing show cause notices to the claimants in cases where the refund application is not re-submitted after the issuance of a deficiency memo. These show-cause-notices are being subsequently adjudicated and orders are being passed in

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Form GST RFD-04/06. It is clarified that show-cause-notices are not required to be issued where deficiency memos have been issued. A refund application which is re-submitted after the issuance of a deficiency memo shall have to be treated as a fresh application. No order in *Form GST RFD-04/06* can be issued in respect of an application against which a deficiency memo has been issued and which has not been resubmitted subsequently.

8. *Treatment of refund applications where the amount claimed is less than rupees one thousand* :

8.1 Sub-section (14) of section 54 of the TNGST Act provides that no refund under sub-section (5) or sub-section (6) of section 54 shall be paid to an applicant, if the amount is less than one thousand rupees.

8.2 In this regard, it is clarified that the limit of rupees one thousand shall be applied for each tax head separately and not cumulatively. The limit would not apply in cases of refund of excess balance in the electronic cash ledger. All field formations are requested to reject claims of refund from the electronic credit ledger for less than one thousand rupees and re-credit such amount by issuing an order in *Form GST RFD-01B*.

This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

[Encl : Annexure-A]

COMMISSIONER OF STATE TAX

[RC No. 151/2018/A1/Taxation]

ANNEXURE-A

Format for statement of invoices to be submitted with application for refund in FORM GST RFD-01A

Sl. No.	*GSTIN of the supplier*	*Name of the supplier*	*Invoice details*			*Type*	*Central tax*	*State tax/ Union Territory tax*	*Integrated tax*	*Cess*	*Eligible for ITC*	*Amount of eligible ITC*
			Invoice No.	*Date*	*Value*	*Inputs/ input services/capital goods*					*Yes/ No/ Partially*	
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*	*11*	*12*	*13*

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Circular No. 38(2018)/2019-TNGST, dated 5th April, 2019.

Subject: **E-way bill in case of storing of goods in godown of transporter—Regarding**

Ref : **Circular No. 61/35/2018-GST dated 4-9-2018[1] issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

Various representations have been received on the matter pertaining to the textile sector and problems being faced by weavers and artisans regarding storage of their goods in the warehouse of the transporter. It has been stated that textile traders use transporters' godown for storage of their goods due to their weak financial conditions. The transporters providing such warehousing facility will have to get themselves registered under GST and maintain detailed records in cases where the transporter takes delivery of the goods and temporarily stores them in his warehouse for further transportation of the goods till the consignee/recipient taxpayer's premises. The transport industry is facing difficulties due to the same and a request has been made to treat these godowns as transit godowns.

2. In view of the difficulties being faced by the transporters and the consignee/recipient taxpayer and to ensure uniformity in the procedure across the sectors and the country, the Commissioner of State Tax in exercise of his powers conferred under section 168 of the Tamilnadu Goods and Services Tax Act, 2017 (hereafter referred to as the TNGST Act) hereby clarifies the issues in the succeeding paragraphs.

3. As per rule 138 of the Tamilnadu Goods and Services Tax Rules, 2017 (hereinafter referred to as "the TNGST Rules") e-way bill is a document which is required for the movement of goods from the supplier's place of business to the recipient taxpayer's place of business. Therefore, the goods in movement including when they are stored in the transporter's godown (even if the godown is located in the recipient taxpayer's city/town) prior to delivery shall always be accompanied by a valid e-way bill.

4. Further, section 2(85) of the TNGST Act defines the "place of business" to include "a place from where the business is ordinarily carried out, and *includes a warehouse, a godown or any other place where a taxable person stores his goods*, supplies or receives goods or services or both". An additional place of business is the place of business from where taxpayer carries out business related activities within the State, in addition to the principal place of business.

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1. See [2018] 57 GSTR (St.) 10.

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5. Thus, in case the consignee/recipient taxpayer stores his goods in the godown of the transporter, then the transporter's godown has to be declared as an additional place of business by the recipient taxpayer. In such cases, mere declaration by the recipient taxpayer to this effect with the concurrence of the transporter in the said declaration will suffice. Where the transporter's godown has been declared as the additional place of business by the recipient taxpayer, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer's additional place of business). Hence, e-way bill validity in such cases will not be required to be extended.

6. Further, whenever the goods are transported from the transporters' godown, which has been declared as the additional place of business of the recipient taxpayer, to any other premises of the recipient taxpayer then, the relevant provisions of the e-way bill rules shall apply. Hence, whenever the goods move from the transporter's godown (i.e, recipient taxpayer's additional place of business) to the recipient taxpayer's any other place of business, a valid e-way bill shall be required, as per the extant State-specific e-way bill rules.

7. Further, the obligation of the transporter to maintain accounts and records as specified in section 35 of the TNGST Act read with rule 58 of the TNGST Rules shall continue as a warehouse-keeper. Furthermore, the recipient taxpayer shall also maintain accounts and records as required under rules 56 and 57 of the TNGST Rules. Furthermore, as per rule 56(7) of the TNGST Rules, books of accounts in relation to goods stored at the transporter's godown (i.e., the recipient taxpayer's additional place of business) by the recipient taxpayer may be maintained by him at his principal place of business. It may be noted that the facility of declaring additional place of business by the recipient taxpayer is in no way putting any additional compliance requirement on the transporters.

8. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

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Circular No. 39(2018)/2019-TNGST, dated 5th April, 2019.

Subject: **Levy of GST on Priority Sector Lending Certificates (PSLC)—Regarding**

Ref : **Circular No. 62/36/2018-GST, dated 12-9-2018**[1] **Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

Representations have been received requesting to clarify the following :

(i) Mechanism for discharge of tax liability on trading of Priority Sector Lending Certificate (PSLC) for the period July 1, 2017 to May 27, 2018.

(ii) GST rate applicable on trading of PSLCs.

2. The representations have been examined. With the approval of the GST Implementation Committee of the GST Council, it is clarified that GST on PSLCs for the period July 1, 2017 to May 27, 2018 will be paid by the seller bank on forward charge basis and GST rate of 12 per cent. will be applicable on the supply.

3. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 40(2018)/2019-TNGST, dated 5th April, 2019.

Subject: **Clarifications regarding GST on residential programmes or camps meant for advancement of religion, spirituality or yoga by religious and charitable trusts—Reg.**

Ref : **Circular No. 66/40/2018-GST, dated 26-9-2018**[2] **issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

Certain representations have been received seeking clarification as regards applicability of GST on residential programmes or camps meant for advancement of religion, spirituality or yoga where the fee charged includes the cost of boarding and lodging.

The issue has already been clarified in the Chapter 39 "GST on Charitable and Religious Trusts" of Compilation of 51 GST Flyers updated as on

1. See [2018] 57 GSTR (St.) 117.
2. See [2018] 57 GSTR (St.) 131.

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January 1, 2018 available on CBIC website at the link *https://goo.gl/EgA-JtA*.

The relevant portion reads as under :

"The services provided by entity registered under section 12AA of the Income Tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt. Fee or consideration charged in any other form from the participants for participating in a religious, Yoga or meditation programme or camp meant for advancement of religion, spirituality or yoga shall be exempt. Residential programmes or camps where the fee charged includes cost of lodging and boarding shall also be exempt as long as the primary and predominant activity, objective and purpose of such residential programmes or camps is advancement of religion, spirituality or yoga. However, if charitable or religious trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation, such activities will be taxable. Similarly, activities such as holding of fitness camps or classes such as those in aerobics, dance, music, etc. will be taxable".

3. It is accordingly clarified that taxability of the services of religious and charitable trusts by way of residential programmes or camps meant for advancement of religion, spirituality or yoga may be decided accordingly.

4. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 41(2018)/2019-TNGST, dated 5th April, 2019.

Subject: **Clarifications on processing of applications for cancellation of registration submitted in FORM GST REG-16—Reg.**

Ref : **Circular No. 69/43/2018-GST, dated 26-10-2018[1] issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

The Commissioner of State Tax is in receipt of representations seeking clarifications on various issues in relation to processing of the applications for cancellation of registration filed by taxpayers in FORM GST REG-16. In order to clarify these issues and to ensure uniformity in the implementation

1. See [2018] 58 GSTR (St.) 142.

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of the provisions of law across the field formations, the Commissioner of state Tax, in exercise of powers conferred by section 168 of the Tamilnadu Goods and Services Tax Act, 2017 (hereinafter referred to as the "TNGST Act"), hereby clarifies the issues as detailed hereunder :

2. Section 29 of the TNGST Act, read with rule 20 of the Tamilnadu Goods and Services Tax Act, 2017 (hereinafter referred to as the "TNGST Rules") provides that a taxpayer can apply for cancellation of registration in FORM GST REG-16 in the following circumstances :

(a) Discontinuance of business or closure of business ;

(b) Transfer of business on account of amalgamation, merger, de-merger, sale, lease or otherwise ;

(c) Change in constitution of business leading to change in PAN ;

(d) Taxable person (including those who have taken voluntary registration) is no longer liable to be registered under GST ;

(e) Death of sole proprietor ;

(f) Any other reason *(to be specified in the application)*.

3. Rule 20 of the TNGST Rules provides that the taxpayer applying for cancellation of registration shall submit the application in FORM GST REG-16 on the common portal within a period of 30 days of the "*occurrence of the event warranting the cancellation*". It might be difficult in some cases to exactly identify or pinpoint the day on which such an event occurs. For instance, a business may be transferred/disposed over a period of time in a piece meal fashion. In such cases, the 30-day deadline may be liberally interpreted and the taxpayers' application for cancellation of registration may not be rejected because of the possible violation of the deadline.

4. While initiating the application for cancellation of registration in *Form GST REG-16*, the common portal captures the following information which has to be mandatorily filled in by the applicant :

(a) Address for future correspondence with mobile number and email address ;

(b) Reason for cancellation ;

(c) Date from which cancellation is sought ;

(d) Details of the value and the input tax/tax payable on the stock of inputs, inputs contained in semi-finished goods, inputs contained in finished goods, stock of capital goods/plant and machinery ;

(e) In case of transfer, merger of business, etc., particulars of registration of the entity in which the existing unit has been merged, amalga-

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mated, or transferred (including the copy of the order of the High Court/ transfer deed) ;

(f) Details of the last return filed by the taxpayer along with the ARN of such return filed.

On successful submission of the cancellation application, the same appears on the dashboard of the jurisdictional officer.

5. Since the cancellation of registration has no effect on the liability of the taxpayer for any acts of commission/omission committed before or after the date of cancellation, the proper officer should accept all such applications within a period of 30 days from the date of filing the application, except in the following circumstances :

(a) The application in *Form GST REG-16* is incomplete, i.e., where all the relevant particulars, as detailed in para 4 above, have not been entered ;

(b) In case of transfer, merger or amalgamation of business, the new entity in which the applicant proposes to amalgamate or merge has not got registered with the tax authority before submission of the application for cancellation.

In all cases other than those listed at (a) and (b) above, the application for cancellation of registration should be immediately accepted by the proper officer and the order for cancellation should be issued in *Form GST REG-19* with the effective date of cancellation being the same as the date from which the applicant has sought cancellation in *Form GST REG-16*. In any case the effective date cannot be a date earlier to the date of application for the same.

6. In situations referred to in (a) or (b) in para 5 above, the proper officer shall inform the applicant in writing about the nature of the discrepancy and give a time period of seven working days to the taxpayer, from the date of receipt of the said letter, to reply. If no reply is received within the specified period of seven working days, the proper officer may reject the application on the system, after giving the applicant an opportunity to be heard, recording reasons for rejection in the dialog box that opens once the "Reject" button is chosen. If reply to the query is received and the same on examination is found satisfactory, the proper officer may approve the application for cancellation and proceed to cancel the registration by issuing an order in FORM GST REG-19. If reply to the query is found to be not satisfactory, the proper officer may reject the application for cancellation on the system, after giving the applicant an opportunity to be heard. The proper officer must also record his reasons for rejection of the application in the dialog box that opens when the "Reject" button is chosen.

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7. Section 45 of the TNGST Act requires every registered person (other than an input service distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52) whose registration has been cancelled, to file a final return in *Form GSTR-10*, within three months of the effective date of cancellation or the date of order of cancellation, whichever is later. The purpose of the final return is to ensure that the taxpayer discharges any liability that he/she may have incurred under sub-section (5) of the section 29 of the TNGST Act. It may be noted that the last date for furnishing of *Form GSTR-10* by those taxpayers whose registration has been cancelled on or before 30th September, 2018 has been extended till 31st December, 2018 vide TNGST G. O. (Ms.) No. 141, dated October 26, 2018.

8. Further, sub-section (5) of section 29 of the TNGST Act, read with rule 20 of the TNGST Rules states that the taxpayer seeking cancellation of registration shall have to pay, by way of debiting either the electronic credit or cash ledger, the input tax contained in the stock of inputs, semi-finished goods, finished goods and capital goods or the output tax payable on such goods, whichever is higher. For the purpose of this calculation, the stock of inputs, semi-finished goods, finished goods and capital goods shall be taken as on the day immediately preceding the date with effect from which the cancellation has been ordered by the proper officer, i.e., the date of cancellation of registration. However, it is clarified that this requirement to debit the electronic credit and/or cash ledger by suitable amounts should not be a prerequisite for applying for cancellation of registration. This can also be done at the time of submission of final return in *Form GSTR-10*. In any case, once the taxpayer submits the application for cancellation of his/her registration from a specified date, he/she will not be able to utilize any remaining balances in his/her electronic credit/cash ledgers from the said date except for discharging liabilities under GST Act up to the date of filing of final return in *Form GSTR-10*. Therefore, the requirement to reverse the balance in the electronic credit ledger is automatically met. In case it is later determined that the output tax liability of the taxpayer, as determined under sub-section (5) of section 29 of the TNGST Act, was greater than the amount of input-tax credit available, then the difference shall be paid by him/her in cash. It is reiterated that, as stated in sub-section (3) of section 29 of the TNGST Act, the cancellation of registration does not, in any way, affect the liability of the taxpayer to pay any dues under the GST law, irrespective of whether such dues have been determined before or after the date of cancellation.

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9. In case the final return in *Form GSTR-10* is not filed within the stipulated date, then notice in *Form GSTR-3A* has to be issued to the taxpayer. If the taxpayer still fails to file the final return within 15 days of the receipt of notice in *Form GSTR-3A*, then an assessment order in *Form GST ASMT-13* under section 62 of the TNGST Act read with rule 100 of the TNGST Rules shall have to be issued to determine the liability of the taxpayer under sub-section (5) of section 29 on the basis of information available with the proper officer. If the taxpayer files the final return within 30 days of the date of service of the order in *Form GST ASMT-13*, then the said order shall be deemed to have been withdrawn. However, the liability for payment of interest and late fee shall continue.

10. Rule 68 of the TNGST Rules requires issuance of notices to registered persons who fail to furnish returns under section 39 (*Form GSTR-1*, *Form GSTR-3B* and *Form GSTR-4*), section 44 (Annual Return–*Form GSTR-9*/*Form GSTR-9A*/*Form GSTR-9C*), section 45 (Final Return–*Form GSTR-10*) or section 52 (TCS Return–*Form GSTR-6*). It is clarified that issuance of notice would not be required for registered persons who have not made any taxable supplies during the intervening period (i.e., from the date of registration to the date of application for cancellation of registration) and has furnished an undertaking to this effect.

11. It is pertinent to mention here that section 29 of the TNGST Act has been amended by the TNGST (Amendment) Act, 2018 to provide for "*Suspension*" of registration. The intent of the said amendment is to ensure that a taxpayer is freed from the routine compliances, including filing returns, under GST Act during the pendency of the proceedings related to cancellation. Although the provisions of the TNGST (Amendment) Act, 2018 have not yet been brought into force, it will be prudent for the field formations not to issue notices for non-filing of return for taxpayers who have already filed an application for cancellation of registration under section 29 of the TNGST Act. However, the requirement of filing a final return, as under section 45 of the TNGST Act, remains unchanged.

12. It may be noted that the information in table in *Form GST REG-19* shall be taken from the liability ledger and the difference between the amounts in Table 10 and Table 11 of *Form GST REG-16*.

13. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

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Circular No. 42(2018)/2019-TNGST, dated 23rd April, 2019.

Subject: **Clarification on certain issues related to refund—Regarding**

Ref : **CBEC, Department of Revenue, GST Policy Wing, Circular No. 70/44/2018-GST, dated October 26, 2018[1].**

The Commissioner of State Tax is in receipt of representations seeking clarification on certain issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Commissioner of State tax, in exercise of powers conferred by section 168 of the Tamilnadu Goods and Services Tax Act, 2017 (hereinafter referred to as the "TNGST Act"), hereby clarifies the issues as detailed hereunder :

2. *Status of refund claim after issuance of deficiency memo and re-credit of electronic credit ledger :*

2.1 Para 7.1 of Circular No. 59/33/2018-GST, dated the 4th September, 2018[2] clarifies the intent of law in cases where a deficiency memo is issued in respect of a refund claim. In para 7.2 of the said circular, the practise being followed in the field formations was elaborated and it was clarified that show-cause notices are not required to be issued (and consequently no orders are required to be issued in *Form GST RFD-04/06*) in cases where refund application is not re-submitted after the issuance of a deficiency memo (in *Form GST RFD-03*). It was also clarified that once a deficiency memo has been issued against an application for refund, the amount of input tax credit debited under sub-rule (3) of rule 89 of the Tamilnadu Goods and Services Tax Rules, 2017 (hereinafter referred to as the "TNGST Rules") is required to be re-credited to the electronic credit ledger of the applicant by using *Form GST RFD-01B* and the taxpayer is expected to file a fresh application for refund.

2.2 The issue has been re-examined and it has been observed that presently the common portal does not allow a taxpayer to file a fresh application for refund once a deficiency memo has been issued against an earlier refund application for the same period. Therefore, it is clarified that till the time such facility is developed, taxpayers would be required to submit the rectified refund application under the earlier Application Reference Number (ARN) only. Thus, it is reiterated that when a deficiency memo in *Form GST RFD-03* is issued to taxpayers, re-credit in the elect-

1. See [2018] 58 GSTR (St.) 147.
2. See [2018] 57 GSTR (St.) 110.

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ronic credit ledger (using *Form GST RFD-01B)* is not required to be carried out and the rectified refund application would be accepted by the jurisdictional tax authorities with the earlier ARN itself. It is further clarified that a suitable clarification would be issued separately for cases in which such re-credit has already been carried out.

3. *Allowing exporters who have received capital goods under EPCG to claim refund of IGST paid on exports :*

3.1 Sub-rule (10) of rule 96 of the Tamilnadu Goods and Services Tax Rules, 2017 (hereinafter referred to as "said sub-rule"), restricts exporters from availing the facility of claiming refund of IGST paid on exports in certain scenarios. It was intended that exporters availing benefit of certain notifications would not be eligible to avail the facility of such refund. However, representations have been received requesting that exporters who have received capital goods under the Export Promotion Capital Goods Scheme (hereinafter referred to as "EPCG scheme"), should be allowed to avail the facility of claiming refund of the IGST paid on exports. GST Council, in its 30th meeting held in New Delhi on 28th September, 2018, had accorded approval to the proposal of suitably amending the said sub-rule along with sub-rule (4B) of rule 89 of the TNGST Rules prospectively in order to enable such exporters to avail the said facility TN G. O. (Ms.) No. 130, dated October 9, 2018 has been issued to carry out the changes recommended by the GST Council. Alongside the amendment carried out in the said sub-rule through Notification No. II(2)/CTR/858(a-2)/2017, dated October 13, 2017[1] (Issue No. 328) has been rescinded vide TN G. O. (Ms.) No. 129, dated October 9, 2018.

3.2 For removal of doubts, it is clarified that the net effect of these changes would be that any exporter who himself/herself imported any inputs/capital goods in terms of Notification Nos. 78/2017-Customs[2] and 79/2017-Customs[3] both dated 13th October, 2017 shall be eligible to claim refund of the IGST paid on exports till the date of the issuance of the TN G. O. (Ms.) No. 130, dated October 9, 2018 referred to above.

3.3 Further, after the issuance of TN G. O. (Ms.) No. 130, dated October 9, 2018, exporters who are importing goods in terms of Notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13th October, 2017 would not be eligible for refund of IGST paid on exports as provided in the said sub-rule. However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification

1. See [2018] 48 GSTR (St.) 195.
2. See [2018] 3 GSTR-OL (St.) 443.
3. See [2018] 4 GSTR-OL (St.) 2.

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No. 79/2017-Customs dated 13th October, 2017 or through domestic procurement in terms of Notification No. II(2)/CTR/868(f-2)/2017, dated October 18, 2017[1] shall continue to be eligible to claim refund of IGST paid on exports and would not be hit by the restrictions provided in the said sub-rule. All clarifications issued in this regard vide any circular issued earlier are hereby superseded.

4. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX

[RC No. 151/2018/A1/Taxation]

ANNEXURE A

FORM GST RFD–10A

(*See* Rule 95)

APPLICATION FOR REFUND BY CANTEEN STORES DEPARTMENT (CSD)

1. GSTIN :
2. Name :
3. Address :
4. Tax period (Quarter) : From <DD/MM/YY>To <DD/MM/YY>
5. Amount of refund claim : <INR> <In Words>
6. Details of inward supplies of goods received :

GSTIN of supplier	*Invoice/debit note/ credit note details*			*Rate*	*Taxable value*	*Amount of tax*		
	No.	*Date*	*Value*			*Integ-rated tax*	*Central Tax*	*State/Union territory Tax*
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*
6A. Invoices received								
7.								
6B. Debit/credit note received								
Total								

Refund applied for :

Central Tax	*State /Union territory Tax*	*Integrated Tax*	*Total*
<Total>	*<Total>*	*<Total>*	*<Total>*

1. See [2018] 50 GSTR (St.) 166.

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8. Details of bank account :

a. Bank account number :

b. Bank account type :

c. Name of the bank :

d. Name of the account holder :

e. Address of bank branch :

f. IFSC :

g. MICR :

9. Attachment of the following documents with the refund application:

a. Copy of Form GSTR-3B for the period for which application has been filed.

b. Copy of Form GSTR-2A for the period for which application has been filed.

10. Verification

I as an authorised representative of . . . . . . <<Name of Canteen Store Department>> hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom. I further declare that all the goods, in respect of which the refund is being claimed, have been received by us and that no refund has been claimed earlier against any of the invoices against which refund has been claimed in this application.

Date : Signature of Authorised Signatory :

Place :

Name :. . . . .

Designation/Status

Instructions :

1. Application for refund shall be filed on quarterly basis.

2. Applicant should ensure that all the invoices declared by them have the GSTIN of the supplier and the GSTIN of the respective CSD clearly marked on them.

Circular No. 43(2018)/2019-TNGST, dated 23rd April, 2019.

Subject: **Clarifications of issues under GST related to casual taxable person and recovery of excess input tax credit distributed by an input service distributor—Regarding**

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Ref : **Circular No. 71/45/2018-GST, dated 26-10-2018[1] issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

Representations have been received seeking clarification on certain issues under the GST laws. The same have been examined and the clarifications on the same are as below :

Sl. No.	*Issue*	*Clarification*
1	Whether the amount required to be deposited as advance tax while taking registration as a casual taxable person (CTP) should be 100% of the estimated gross tax liability or the estimated tax liability payable in cash should be calculated after deducting the due eligible ITC which might be available to CTP ?	1. It has been noted that while applying for registration as a casual taxable person, the *Form GST REG-1* (S. No. 11) seeks information regarding the "*estimated net tax liability*" only and not the gross tax liability. 2. It is accordingly clarified that the amount of advance tax which a casual taxable person is required to deposit while obtaining registration should be calculated after considering the due eligible ITC which might be available to such taxable person.
2	As per section 27 of the Tamilnadu Goods and Services Tax Act, 2017 (hereinafter referred to as the said Act), period of operation by causal taxable person is ninety days with provision for extension of same by the proper officer for a further period not exceeding ninety days. Various representations have been received for further extension of the said period beyond the period of 180 days, as mandated in law.	1. It is clarified that in case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a normal taxable person. 2. While applying for normal registration the said person should upload a copy of the allotment letter granting him permission to use the premises for the exhibition and the allotment letter/consent letter shall be treated as the proper document as a proof for his place of business. 3. In such cases he would not be required to pay advance tax for the purpose of registration. 4. He can surrender such registration once the exhibition is over.
3.	Representations have been received regarding the manner of recovery of excess credit distributed by an input service distributor (ISD) in contravention of the provisions contained in section 20 of the TNGST Act.	1. According to section 21 of the TNGST Act where the ISD distributes the credit in contravention of the provisions contained in section 20 of the TNGST Act resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest and penalty if any.

1. See [2018] 58 GSTR (St.) 149.

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Sl. No.	Issue	Clarification
		2. The recipient unit(s) who have received excess credit from ISD may deposit the said excess amount voluntarily along with interest if any by using *Form GST DRC-03*. 3. If the said recipient unit(s) does not come forward voluntarily, necessary proceedings may be initiated against the said unit(s) under the provisions of section 73 or 74 of the TNGST Act as the case may be. *Form GST DRC-07* can be used by the tax authorities in such cases. 4. It is further clarified that the ISD would also be liable to a general penalty under the provisions contained in section 122(1)(ix) of the TNGST Act.

2. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 44(2018)/2019-TNGST, dated 23rd April, 2019.

Subject: **Circular to clarify the procedure in respect of return of time expired drugs or medicines—Regarding**

Ref : **Circular No. 72/46/2018-GST, dated 26-10-2018[1] issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi**

Various representations have been received seeking clarification on the procedure to be followed in respect of return of time expired drugs or medicines under the GST laws. The issues raised in the said representations have been examined and to ensure uniformity in the implementation of the law across the field formations, the Commissioner of State Tax, in exercise of powers conferred under section 168 of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as the "TNGST Act") hereby clarifies the issue in succeeding paragraphs

2. The common trade practice in the pharmaceutical sector is that the drugs or medicines (hereinafter referred to as "goods") are sold by the

1. See [2018] 58 GSTR (St.) 151.

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manufacturer to the wholesaler and by the wholesaler to the retailer on the basis of an invoice/bill of supply as case may be. It is significant to mention here that such goods have a defined life term which is normally referred to as the date of expiry. Such goods which have crossed their date of expiry are colloquially referred to as time expired goods and are returned back to the manufacturer, on account of expiry, through the supply chain.

3. It is clarified that the retailer/wholesaler can follow either of the below mentioned procedures for the return of the time expired goods :

(A) Return of time expired goods to be treated as fresh supply :

(a) In case the person returning the time expired goods is a registered person (other than a composition taxpayer), he may, at his option, return the said goods by treating it is as a fresh supply and thereby issuing an invoice for the same (hereinafter referred to as the, "return supply"). The value of the said goods as shown in the invoice on the basis of which the goods were supplied earlier may be taken as the value of such return supply. The wholesaler or manufacturer, as the case may be, who is the recipient of such return supply, shall be eligible to avail input tax credit (hereinafter referred to as "ITC") of the tax levied on the said return supply subject to the fulfilment of the conditions specified in section 16 of the TNGST Act.

(b) In case the person returning the time expired goods is a composition taxpayer, he may return the said goods by issuing a bill of supply and pay tax at the rate applicable to a composition taxpayer. In this scenario there will not be any availability of ITC to the recipient of return supply.

(c) In case the person returning the time expired goods is an unregistered person, he may return the said goods by issuing any commercial document without charging any tax on the same.

(d) Where the time expired goods which have been returned by the retailer/wholesaler are destroyed by the manufacturer, he/she is required to reverse the ITC availed on the return supply in terms of the provisions of clause (h) of sub-section (5) of section 17 of the TNGST Act. It is pertinent to mention here that the ITC which is required to be reversed in such scenario is the ITC availed on the return supply and not the ITC that is attributable to the manufacture of such time expired goods.

Illustration : Supposedly, manufacturer has availed ITC of Rs. 10 at the time of manufacture of medicines valued at Rs. 100. At the time of return of such medicine on the account of expiry, the ITC available to the manufacturer on the basis of fresh invoice issued by wholesaler is Rs. 15. So, when the time expired goods are destroyed by the manufacturer he would be required to reverse ITC of Rs. 15 and not of Rs. 10.

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(B) Return of time expired goods by issuing credit note :

(a) As per sub-section (1) of section 34 of the TNGST Act the supplier can issue a credit note where the goods are returned back by the recipient. Thus, the manufacturer or the wholesaler who has supplied the goods to the wholesaler or retailer, as the case may be, has the option to issue a credit note in relation to the time expired goods returned by the wholesaler or retailer, as the case may be. In such a scenario, the retailer or wholesaler may return the time expired goods by issuing a delivery challan. It may be noted that there is no time limit for the issuance of a credit note in the law except with regard to the adjustment of the tax liability in case of the credit notes issued prior to the month of September following the end of the financial year and those issued after it.

(b) It may further be noted that if the credit note is issued within the time limit specified in sub-section (2) of section 34 of the TNGST Act, the tax liability may be adjusted by the supplier, subject to the condition that the person returning the time expired goods has either not availed the ITC or if availed has reversed the ITC so availed against the goods being returned.

(c) However, if the time limit specified in sub-section (2) of section 34 of the TNGST Act has lapsed, a credit note may still be issued by the supplier for such return of goods but the tax liability cannot be adjusted by him in his hands. It may further be noted that in case time expired goods are returned beyond the time period specified in the sub-section (2) of section 34 of the TNGST Act and a credit note is issued consequently, there is no requirement to declare such credit note on the common portal by the supplier (i.e., by the person who has issued the credit note) as tax liability cannot be adjusted in this case.

(d) Further, where the time expired goods, which have been returned by the retailer/wholesaler, are destroyed by the manufacturer, he/she is required to reverse the ITC attributable to the manufacture of such goods, in terms of the provisions of clause (h) of sub-section (5) of section 17 of the TNGST Act. This has been illustrated in Table below :

	Date of supply of goods from manufacturer/ wholesaler to wholesaler/ retailer	*Date of return of time expired goods from retailer/ wholesaler to wholesaler/ manufacturer*	*Treatment in terms of tax liability and credit note*
Case 1	1st July, 2017	20th September, 2018	Credit note will be issued by the supplier (manufacturer/wholesaler) and the same to

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			be uploaded by him on the common portal. Subsequently, tax liability can be adjusted by such supplier provided the recipient (wholesaler/retailer) has either not availed the ITC or if availed has reversed the ITC.
Case 2	1st July, 2017	20th October, 2018	Credit note will be issued by the supplier (manufacturer/wholesaler) but there is no requirement to upload the same on the common portal. Subsequently tax liability cannot be adjusted by such supplier.

3. It may be noted that though this circular discusses the scenarios in relation to return of goods on account of expiry of the same, it may be applicable to such other scenarios where the goods are returned on account of reasons other than the one detailed above.

4. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 45(2018) 2019-TNGST, dated 23rd April, 2019.

Subject: **Clarifications on scope of principal and agent relationship under Schedule I of TNGST Act, 2017 in the context of del credere agent—Regarding**

Ref : **Circular No. 73/47/2018-GST, dated 5-11-2018**[1] **issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi**

Post issuance of Circular No. 35/2018-TNGST, dated April 5, 2019[2], various representations have been received from the trade and industry, as well as from the field formations regarding the scope and ambit of principal agent relationship under GST in the context of del credere agent (hereinafter referred to as "DCA"). In order to clarify these issues and to ensure uniformity of implementation across field formations, the Board, in exercise of its powers conferred under section 168 of the Tamilnadu Goods and Services Tax Act, 2017 (hereinafter referred to as "TNGST Act") hereby clarifies the issues in succeeding paras.

1. See [2018] 58 GSTR (St.) 252.
2. See page 32 *supra*.

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2. In commercial trade parlance, a DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the DCA guarantees the payment to the supplier. In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer), and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent. In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date. This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer. Concerns have been expressed regarding the valuation of supplies from Principal to recipient where the payment for such supply is being discharged by the recipient through the loan provided by DCA or by the DCA himself. Issues arising out of such loan arrangement have been examined and the clarifications on the same are as below :

Sl. No.	*Issue*	*Clarification*
1	Whether a DCA falls under the ambit of agent under para 3 of Schedule I of the TNGST Act ?	As already clarified vide Circular No. 35/2018-TNGST, dated April 5, 2019[1] ; whether or not the DCA will fall under the ambit of agent under para 3 of Schedule I of the TNGST Act depends on the following possible scenarios : • In case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent. • In case where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.
2	Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where	In such a scenario following activities are taking place : 1. Supply of goods from supplier (principal) to recipient ; 2. Supply of agency services from DCA to the supplier or the recipient or both ; 3. Supply of extension of loan services by the DCA to the recipient.

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Sl. No.	*Issue*	*Clarification*
	DCA is not an agent under Para 3 of Schedule I of the TNGST Act ?	It is clarified that in cases where the DCA is not an agent under para 3 of Schedule I of the TNGST Act, the temporary short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply. Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier. It may be noted that vide Notification No. II(2)/CTR/532/d-15/2017, dated June 29, 2017[2] (S. No. 27) (S. No. 27), services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) has been exempted.
3.	Where DCA is an agent under para 3 of Schedule I of the TNGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not ?	In such a scenario following activities are taking place : 1. Supply of goods by the supplier (principal) to the DCA ; 2. Further supply of goods by DCA to the recipient ; 3. Supply of agency services by the DCA to the supplier or the recipient or both ; 4. Extension of credit by the DCA to the recipient. It is clarified that in cases where the DCA is an agent under para 3 of Schedule I of the TNGST Act, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient. It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per clause (d) of sub-section (2) of section 15 of the TNGST Act.

1. See page 32 supra.
2. See [2017] 106 VST (St.) 248.

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3. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 46(2018) 2019-TNGST, dated 23rd April, 2019.

Subject: **Clarifications on collection of tax at source by Tea Board of India—Regarding**

Ref : **Circular No. 74/48/2018-GST, dated 5-11-2018**[1] **issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi**.

Tea Board of India (hereinafter referred to as the, "Tea Board"), being the operator of the electronic auction system for trading of tea across the country including for collection and settlement of payments, admittedly falls under the category of electronic commerce operator liable to collect Tax at Source (hereinafter referred to as, "TCS") in accordance with the provisions of section 52 of the Tamilnadu Goods and Service Tax Act, 2017 (hereinafter referred to as, "the TNGST Act").

2. The participants in the said auction are the sellers, i.e., the tea producers and auctioneers who carry out the auction on behalf of such sellers and buyers.

3. It has been represented that the buyers in the said auction make payment of a consolidated amount to an escrow Account maintained by the Tea Board. The said consolidated amount is towards the value of the tea, the selling and buying brokerages charged by the auctioneers and also the amount charged by the Tea Board from sellers, auctioneers and buyers. Thereafter, Tea Board pays to the sellers (i.e. tea producers), from the said escrow account, for the supply of goods made by them (i.e., tea) and to the auctioneers for the supply of services made by them (i.e., brokerage). Under no circumstances, the payment is made by the Tea Board to the auctioneers on account of supply of goods, i.e., tea sold at auction.

4. A representation has been received from Tea Board, seeking clarification whether they should collect TCS under section 52 of the TNGST Act from the sellers of tea (i.e., the tea producers), or from the auctioneers of tea or from both.

The matter has been examined. In exercise of the powers conferred under section 168 of the TNGST Act, for the purpose of uniformity in the

1. See [2018] 58 GSTR (St.) 255.

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implementation of the Act, it is hereby clarified, that TCS at the notified rate, in terms of section 52 of the TNGST Act, shall be collected by Tea Board respectively from the,—

(i) sellers (i.e., tea producers) on the net value of supply of goods, i.e., tea ; and

(ii) auctioneers on the net value of supply of services (i.e., brokerage).

5. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 47(2018)/2019-TNGST, dated 23rd April, 2019.

Subject: **Clarification on certain issues (sale by Government Departments to unregistered person ; leviability of penalty under section 73(11) of the TNGST Act ; rate of tax in case of debit notes/credit notes issued under section 142(2) of the TNGST Act ; applicability of Notification No. II(2)/CTR/823(a-1)/2018 dated, September 13, 2018 ; valuation methodology in case of TCS under Income Tax Act and definition of owner of goods) related to GST—Reg.**

Ref : **Circular No. 76/50/2018-GST, dated 31-12-2018**[1] **issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi**.

Various representations have been received seeking clarification on certain issues under the GST laws. In order to clarify these issues and to en-sure uniformity of implementation across field formations, the Board, in exercise of its powers conferred under section 168 of the Tamilnadu Goods and Services Tax Act, 2017 (hereinafter referred to as the "TNGST Act") hereby clarifies the issues as below :

Sl. No	*Issue*	*Clarification*
1.	Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government Departments are taxable under GST ?	1. It may be noted that intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government,

1. See [2019] 61 GSTR (St.) 145.

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Sl. No	*Issue*	*Clarification*
		Union territory or a local authority is a taxable supply under GST. Vide notification No. II(2)/CTR/858(a-10)/ 2017, dated October 13, 2017 (G. O Ms. No. 134, dated October 13, 2017[1]) and Notification No. 37/2017-Integrated Tax (Rate), dated October 13, 2017[2], it has been notified that intra-State and inter-State supply respectively of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by the Central Government, State Government, Union territory or a local authority to any registered person, would be subject to GST on reverse charge basis as per which tax is payable by the recipient of such supplies 3. A doubt has arisen about taxability of intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority to an unregistered person. 4. It was noted that such supply to an unregistered person is also a taxable supply under GST but is not covered under Notification No. II(2)/CTR/858(a-10)/ 2017, dated October 13, 2017 (G. O M. s. No. 134, dated October 13, 2017) and Notification No. 37/2017-Integrated Tax (Rate), dated October 13, 2017. 5. In this regard, it is clarified that the respective Government departments (i.e., Central Government, State Government, Union territory or a local authority) shall be liable to get registered and pay GST on intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an *unregistered person* subject to the provisions of sections 22 and 24 of the TNGST Act.

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Sl. No	*Issue*	*Clarification*
2.	Whether penalty in accordance with section 73(11) of the TNGST Act should be levied in cases where the return in *FORM GSTR-3B* has been filed after the due date of filing such return ?	1. As per the provisions of section 73(11) of the TNGST Act, penalty is payable in case self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax. 2. It may be noted that a show-cause notice (SCN, for short) is required to be issued to a person where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input-tax credit has been wrongly availed or utilised for any reason under the provisions of section 73(1) of the TNGST Act. The provisions of section 73(11) of the TNGST Act can be invoked only when the provisions of section 73 are invoked. 3. The provisions of section 73 of the TNGST Act are generally not invoked in case of delayed filing of the return in *FORM GSTR-3B* because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is accordingly, clarified that penalty under the provisions of section 73(11) of the TNGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the TNGST Act, a general penalty under section 125 of the TNGST Act may be imposed after following the due process of law.
3.	In case a debit note is to be issued under section 142(2)(a) of the TNGST Act or a credit note under section 142(2)(b) of the TNGST Act, what will be the tax rate applicable—the rate in the pre-GST regime or the rate applicable under GST ?	1. It may be noted that as per the provisions of section 142(2) of the TNGST Act, in case of revision of prices of any goods or services or both on or after the appointed day (i. e., July 1, 2017), a supplementary invoice or debit/credit note may be issued which shall be deemed to have been issued in respect of an outward supply made under the TNGST Act.

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Sl. No	Issue	Clarification
		2. It is accordingly clarified that in case of revision of prices, after the appointed date, of any goods or services supplied before the appointed day thereby requiring issuance of any supplementary invoice, debit note or credit note, the rate as per the provisions of the GST Acts (both TNGST and SGST or IGST) would be applicable.
4.	Applicability of the provisions of section 51 of the TNGST Act (TDS) in the context of Notification No. II(2)/CTR/823(a-1)/2018, dated September 13, 2018.	1. A doubt has arisen about the applicability of long line mentioned in clause (a) of Notification No. II(2)/CTR/823(a-1)/ 2018, dated September 13, 2018. 2. It is clarified that the long line written in clause (a) in Notification No. II(2)/CTR/ 823(a-1)/2018, dated September 13, 2018 is applicable to both the items (i) and (ii) of clause (a) of the said notification. Thus, an authority or a board or any other body whether set up by an Act of Parliament or a State Legislature or established by any Government with fifty-one per cent. or more participation by way of equity or control, to carry out any function would only be liable to deduct tax at source. 3. In other words, the provisions of section 51 of the TNGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State Legislature or established by any Government in which fifty one per cent. or more participation by way of equity or control is with the Government.
5.	What is the correct valuation methodology for ascertainment of GST on tax collected at source (TCS) under the provisions of the Income-tax Act, 1961 ?	1. Section 15(2) of the TNGST Act specifies that the value of supply shall include "any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier."

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Sl. No	*Issue*	*Clarification*
		2. It is clarified that as per the above provisions, taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income-tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS.
6.	Who will be considered as the "owner of the goods" for the purposes of section 129(1) of the TNGST Act ?	It is hereby clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods.

1. See [2018] 48 GSTR (St.) 211.
2. See [2017] 47 GSTR (St.) 501.

2. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 48(2018)/2019-TNGST, dated

Subject: **Clarifications on denial of composition option by tax authorities and effective date thereof—Reg.**

Ref : **Circular No. 77/51/2018-GST, dated 31-12-2018**[1] **issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi**.

Rule 6 of the Tamilnadu Goods and Services Tax Rules, 2017 (hereinafter referred to as the "TNGST Rules") deals with the validity of the composition levy. As per the said rule, the option exercised by a registered person to pay tax under the composition scheme shall remain valid so long as he satisfies the conditions mentioned in section 10 of the Tamilnadu Goods and Services Tax Act, 2017 (hereinafter referred to as the "TNGST Act") and the TNGST Rules. The rule lays down the procedure for with-

1. See [2019] 61 GSTR (St.) 149.

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drawal from the composition scheme by a taxpayer who intends to withdraw from the said scheme and also the procedure for denial of option to the taxpayer to pay tax under the said scheme where he has contravened the provisions of the TNGST Act or the TNGST Rules.

2. In this connection, doubts have been raised as to the date from which withdrawal from the composition scheme shall take effect in a case where the composition taxpayer has exercised such option to withdraw. Doubts have also been raised regarding the effective date of denial of the option to pay tax under the composition scheme where action has been initiated by the tax authorities to deny such option to the composition taxpayer. Further, clarification has been sought regarding the follow up action to be taken by the tax authorities when the composition option is denied to the taxpayer retrospectively. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the TNGST Act, hereby clarifies the issues raised as below.

3. Sub-rule (2) of rule 6 of the TNGST Rules provides that the composition taxpayer shall pay tax under sub-section (1) of section 9 of the TNGST Act as a normal taxpayer from the day he ceases to satisfy any of the conditions of the composition scheme and shall issue tax invoice for every taxable supply made thereafter. Sub-rule (3) of rule 6 of the TNGST Rules provides that the registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in *FORM GST CMP-04* on the common portal. He shall file intimation for withdrawal from the scheme in *FORM GST CMP-04* within seven days of the occurrence of such event.

4. As per sub-rule (4) of rule 6 of the TNGST Rules, where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 of the TNGST Act or has contravened the provisions of the TNGST Act or the TNGST Rules, he may issue a notice to such person in *FORM GST CMP-05* to show cause as to why the option to pay tax under section 10 of the TNGST Act shall not be denied. Upon receipt of the reply to the show cause notice from the registered person in *FORM GST CMP-06*, the proper officer shall, in accordance with the provisions of sub-rule (5) of rule 6 of the TNGST Rules, issue an order in *FORM GST CMP-07* within a period of thirty days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 of the TNGST Act from the date of the option or from the date of the event concerning such contravention, as the case may be.

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5. It is clarified that in a case where the taxpayer has sought withdrawal from the composition scheme, the effective date shall be the date indicated by him in his intimation/application filed in *FORM GST CMP-04* but such date may not be prior to the commencement of the financial year in which such intimation/application for withdrawal is being filed. If at any stage it is found that he has contravened any of the provisions of the TNGST Act or the TNGST Rules, action may be initiated for recovery of tax, interest and penalty. In case of denial of option by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the TNGST Act or the TNGST Rules. In such cases, as provided under sub-section (5) of section 10 of the TNGST Act, the proceedings would have to be initiated under the provisions of section 73 or section 74 of the TNGST Act for determination of tax, interest and penalty for the period starting from the date of contravention of provisions till the date of issue of order in *FORM GST CMP-07*. It is also clarified that the registered person shall be liable to pay tax under section 9 of the TNGST Act from the date of issue of the order in *FORM GST CMP-07*.

Provisions of section 18(1)(c) of the TNGST Act shall apply for claiming credit on inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the date immediately preceding the date of issue of the order.

6. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 49(2018)/2019-TNGST, dated 23rd April, 2019.

Subject: **Clarification on export of services under GST—Reg.**

Ref : **Circular No. 78/52/2018-GST, dated 31-12-2018**[1] **issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi**.

Representations have been received seeking clarification on certain issues relating to export of services under the GST laws. The same have been examined and the clarifications on the same are as below :

1. See [2019] 61 GSTR (St.)151.

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Sl. No.	*Issue*	*Clarification*
1.	In case an exporter of services out sources a portion of the services contract to another person located outside India, what would be the tax treatment of the said portion of the contract at the hands of the exporter ? There may be instances where the full consideration for the out sourced services is not received by the exporter in India.	1. Where an exporter of services located in India is supplying certain services to a recipient located outside India, either wholly or partly through any other supplier of services located outside India, the following two supplies are taking place : (i) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contract value ; (ii) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the out sourced portion of the contract. Thus, the total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services if all the conditions laid down in section 2(6) of the Integrated Goods and Services Tax Act, 2017 (IGST Act, for short) read with section 13(2) of the IGST Act are satisfied. 2. It is clarified that the supplier of services located in India would be liable to pay integrated tax on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India. Furthermore, the said supplier of services located in India would be eligible for taking input tax credit of the integrated tax so paid. 3. Thus, even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India (for the out sourced part of the services), that portion of the consideration shall also

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Sl. No.	Issue	Clarification
		be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act, provided the : (i) integrated tax has been paid by the supplier located in India for import of services on that portion of the services which has been directly provided by the supplier located outside India to the recipient of services located outside India ; and (ii) RBI by general instruction or by specific approval has allowed that a part of the consideration for such exports can be retained outside India. *Illustration* : ABC Ltd. India has received an order for supply of services amounting to $ 5,00,000 to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person, viz., ABC Ltd. India, in accordance with the *Explanation* 1 in section 8 of the IGST Act) to supply a part of the services (say 40 per cent. of the total contract value). ABC Ltd. India shall be the exporter of services for the entire value if the invoice for the entire amount is raised by ABC Ltd. India. The services provided by XYZ Ltd. Mexico to the US based client shall be import of services by ABC Ltd. India and it would be liable to pay integrated tax on the same under reverse charge and also be eligible to take input tax credit of the integrated tax so paid. Further, if the provisions contained in section 2(6) of the IGST Act are not fulfilled with respect to the realization of convertible foreign exchange, say only 60% of the consideration is received in India and the remaining amount is directly paid by the US based client to XYZ Ltd. Mexico, even in such a scenario, 100 per cent. of the total contract value shall be taken as consideration for the export of services by ABC Ltd. India provided integrated tax on import of services has been

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Sl. No.	Issue	Clarification
		paid on the part of the services provided by XYZ Ltd. Mexico directly to the US based client and RBI (by general instruction or by specific approval) has allowed that a part of the consideration for such exports can be retained outside India. In other words, in such cases, the export benefit will be available for the total realization of convertible foreign exchange by ABC Ltd. India and XYZ Ltd. Mexico.

2. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 50(2018)/2019-TNGST, dated 23rd April, 2019.

Subject: **Clarification on refund related issues—Reg.**

Ref : **Circular No. 79/53/2018-GST, dated 31-12-2018[1] issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

Various representations have been received seeking clarification on various issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Tamilnadu Goods and Services Tax Act, 2017 (hereinafter referred to as "TNGST Act"), hereby clarifies the issues detailed hereunder

Physical submission of refund claims with jurisdictional proper officer :

2. Due to the non-availability of the complete electronic refund module, a work around was prescribed vide Cir. No. 1/2018-02/02/2018[2] and Cir. No. 2/2018-02/02/2018[3], wherein a taxpayer was required to file FORM GST RFD-01A on the common portal, generate the Application Reference Number (ARN), take print-outs of the same, and submit it physically in the office of the jurisdictional proper officer, along with all the supporting documents. It has been learnt that this requirement of physical submission

1. See [2019] 61 GSTR (St.) 153.
2. See [2018] 52 GSTR (St.) 115.
3. See [2018] 52 GSTR (St.) 125.

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of documents in the jurisdictional tax office is causing undue hardship to the taxpayers. Therefore, in order to further simplify the refund process, the following instructions, in partial modification of the aforesaid circulars, are issued :

(a) All documents/undertaking/statements to be submitted along with the claim for refund in *FORM GST RFD-01A* shall be uploaded on the common portal at the time of filing of the refund application. Circular No. 37/2018-TNGST, dated April 5, 2019[1] specified that instead of providing copies of all invoices, a statement of invoices needs to be submitted in a prescribed format and copies of only those invoices need to be submitted the details of which are not found in *FORM GSTR-2A* for the relevant period. It is now clarified that the said statement and these invoices, instead of being submitted physically, shall be electronically uploaded on the common portal at the time of filing the claim of refund in *FORM GST RFD-01A*. Neither the application in *FORM GST RFD-01A*, nor any of the supporting documents, shall be required to be submitted physically in the office of the jurisdictional proper officer.

(b) However, the taxpayer will still have the option to physically submit the refund application to the jurisdictional proper officer in *FORM GST RFD-01A*, along with supporting documents, if he so chooses. A taxpayer who still remains unallocated to the Central or State tax authority will necessarily have to submit the refund application physically. They can choose to do so before the jurisdictional proper officer of either the State or the Central tax authority, as was earlier clarified vide Circular No. 1/2018-TNGST, dated February 2, 2018[2].

(c) The ARN will be generated only after the claimant has completed the process of filing the refund application in *FORM GST RFD-01A*, and has completed uploading of all the supporting documents/undertaking/statements/invoices and, where required, the amount has been debited from the electronic credit/cash ledger.

(d) As soon as the ARN is generated, the refund application along with all the supporting documents shall be transferred electronically to the jurisdictional proper officer who shall be able to view it on the system. The application shall be deemed to have been filed under rule 90(2) of the Tamilnadu Goods and Services Tax Rules, 2017 (hereinafter referred to as "TNGST Rules") on the date of generation of the said ARN and the time limit of 15 days to issue an acknowledgement shall be counted from that date. This will obviate the need for a claimant to visit the jurisdictional tax

1. See page 37 *supra*.
2. See [2018] 52 GSTR (St.) 115.

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office for the submission of the refund application. Accordingly, the acknowledgement for the complete application or deficiency memo, as the case may be, would be issued by the jurisdictional tax officer based on the documents so received electronically from the common portal. However, the said acknowledgement or deficiency memo shall continue to be issued manually for the time being.

(e) If a refund application is electronically transferred to the wrong jurisdictional officer, he/she shall reassign it to the correct jurisdictional officer electronically within a period of three days. In such cases, the application shall be deemed to have been filed under rule 90(2) of the TNGST Rules only after it has been so reassigned. Deficiency memos shall not be issued in such cases merely on the ground that the applications were received electronically in the wrong jurisdiction. Where the facility of electronic re-assignment is not available, the present arrangement shall continue.

(f) It has already been clarified *vide* 50/2018-TNGST, dated 23rd April 2019 that after the issuance of a deficiency memo, taxpayers would be required to submit the rectified refund application under the earlier application reference number (ARN) only. It is further clarified that the rectified application, which is to be treated as a fresh refund application, will be submitted manually in the office of the jurisdictional proper officer.

3. It may be noted that the documents/statements/undertakings/invoices to be submitted along with the refund application in *FORM GST RFD-01A* are the same as have been prescribed under the TNGST Rules and various Circulars issued on the subject from time to time. Only the method of submission of these documents/statements/undertakings/invoices is being changed from the physical mode to the electronic mode. It may also be noted that the other stages of processing of a refund claim submitted in *FORM GST RFD-01A* by the jurisdictional tax officer shall continue to be carried out manually for the time being, as is being presently done.

Calculation of refund amount for claims of refund of accumulated input tax credit (ITC) on account of inverted duty structure :

4. Representations have been received stating that while processing the refund of unutilized ITC on account of inverted tax structure, the Departmental Officers are denying the refund of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply, by not including the amount of such ITC while calculating the maximum refund amount as specified in rule 89(5) of the TNGST Rules. The matter has been examined and the following issues are clarified:

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(a) Refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the TNGST Act, is available where ITC remains un-utilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the TNGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

(b) The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with help of the following example :

(i) Suppose a manufacturing process involves the use of an input A (attracting five per cent. GST) and input B (attracting 18 per cent. GST) to manufacture output Y (attracting 12 per cent. GST).

(ii) The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the TNGST Act read with rule 89(5) of the TNGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.

(iii) Further assume that the claimant supplies the output Y having value of Rs. 3,000 during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be Rs. 3,000. Since the claimant has no other outward supplies, his adjusted total turnover will also be Rs. 3,000.

(iv) If we assume that Input A, having value of Rs. 500 and Input B, having value of Rs. 2,000, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to Rs. 385 (Rs. 25 and Rs. 360 on Input A and Input B respectively).

(v) Therefore, multiplying net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of Rs. 385.

(vi) From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is Rs. 360, we get the maximum refund amount, as per rule 89(5) of the TNGST Rules which is Rs. 25.

Disbursal of refund amounts after sanction :

5. Section 56 of the TNGST Act clearly states that if any tax ordered to be refunded is not refunded within 60 days of the date of receipt of application, interest at the rate of 6 per cent (notified vide TN Notification No. II(2)/CTR/532(d-3)/2017, dated June 29, 2017[1]) on the refund amount

1. See [2017] 106 VST (St.) 95.

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starting from the date immediately after the expiry of sixty days from the date of receipt of application (ARN) till the date of refund of such tax shall have to be paid to the claimant. It may be noted that any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the claimant. Therefore, interest will be calculated starting from the date immediately after the expiry of sixty days from the date of receipt of the application till the date on which the amount is credited to the bank account of the claimant. Accordingly, all tax authorities are advised to issue the final sanction orders in *FORM GST RFD-06* within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days by both Central and State Tax Authorities for TNGST/IGST/UTGST/Compensation Cess and SGST respectively.

Refund applications that have been generated on the portal but not physically received in the jurisdictional tax offices :

6. There are a large number of applications for refund in *FORM GST RFD-01A* which have been generated on the common portal but have not yet been physically received in the jurisdictional tax offices. With the implementation of electronic submission of refund application, as detailed in para 2 above, this problem is expected to reduce. However, for the applications (except those relating to refund of excess balance in the electronic cash ledger) which have been generated on the common portal before the issuance of this Circular and which have not yet been physically received in the jurisdictional offices (list of all applications pertaining to a particular jurisdictional office which have been generated on the common portal, if not already available, may be obtained from DG-Systems), the following guidelines are laid down :

(a) All refund applications in which the amount claimed is less than the statutory limit of Rs. 1,000 should be rejected and the amount re-credited to the electronic credit ledger of the applicant through the issuance of *FORM GST RFD-01B*.

(b) For all applications wherein an amount greater than Rs. 1000 has been claimed, a list of applications which have not been received in the jurisdictional tax office within a period of 60 days starting from the date of generation of ARN may be compiled. A communication may be sent to all such claimants on their registered email ids, informing that the application needs to be physical submitted to the jurisdictional tax office within 15 days of the date of the email. The contact details and the address of the jurisdictional officer may also be provided in the said communication. The claimant may be further informed that if he/she fails to physically submit the application within 15 days of the date of the email, the application shall be

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summarily rejected and the debited amount, if any, shall be re-credited to the electronic credit ledger.

7. For the applications generated on the common portal before the issuance of this circular in relation to refund of excess balance from the electronic cash ledger which have not yet been received in the jurisdictional office, the amount debited in the electronic cash ledger in such applications may be re-credited through *FORM GST RFD-01B* provided that there are no liabilities in the electronic liability register. The said amount shall be re-credited even though the return in *FORM GSTR-3B*, as the case may be for the relevant period has not been filed.

8. For the refund applications generated on the common portal after the issuance of this circular, and for the refund applications generated on the common portal before the issuance of this circular and which have been physically received in the jurisdictional tax offices before the issuance of this circular, the existing guidelines, as modified by this circular may be followed.

Issues related to refund of accumulated input tax credit of compensation cess :

9. Several representations have been received requesting clarifications on certain issues related to refund of accumulated input tax credit of compensation cess on account of zero-rated supplies made under bond/letter of undertaking. These issues have been examined and are clarified as below :

(a) *Issue* : A registered person uses inputs on which compensation cess is leviable (e.g. coal) to export goods on which there is no levy of compensation cess (e.g. aluminium). For the period July, 2017 to May, 2018, no ITC is availed of the compensation cess paid on the inputs received during this period. ITC is only availed of the TNGST, SGST/UTGST or IGST charged on the invoices for these inputs. This ITC is utilized for payment of IGST on export of goods. Vide Circular No. 45/19/2018-GST, dated May 30, 2018[1], it was clarified that refund of accumulated ITC of compensation cess on account of zero-rated supplies made under bond/letter of undertaking is available even if the exported product is not subject to levy of cess. After the issuance of this circular, the registered person decides to start exporting under bond/LUT without payment of tax. He also decides to avail (through the return in FORM GSTR-3B) the ITC of compensation cess, paid on the inputs used in the months of July, 2017 to May, 2018, in the month of July, 2018. The registered person then goes on to file a refund claim for ITC

1. See [2018] 54 GSTR (St.) 99.

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accumulated on account of exports for the month of July, 2018 and include the said accumulated ITC for the month of July, 2018. How should the amount of compensation cess to be refunded be calculated ?

Clarification : In the instant case, refund on account of compensation cess is to be recomputed as if the same was available in the respective months in which the refund of unutilized credit of TNGST/SGST/UTGST/IGST was claimed on account of exports made under LUT/Bond. If the aggregate of these recomputed amounts of refund of compensation cess is less than or equal to the eligible refund of compensation cess calculated in respect of the month in which the same has actually been claimed, then the aggregate of the recomputed refund of compensation cess of the respective months would be admissible. Further, the recomputed amount of eligible refund (of compensation cess) in respect of past periods, as aforesaid, would not be admissible in respect of consignments exported on payment of IGST. This process would be applicable for application for refund of compensation cess (not claimed earlier) in respect of the past period.

(b) *Issue* : A registered person uses coal for the captive generation of electricity which is further used for the manufacture of goods (say aluminium) which are exported under bond/letter of undertaking without payment of duty. Refund claim is filed for accumulated input tax credit of compensation cess paid on coal. Can the said refund claim be rejected on the ground that coal is used for the generation of electricity which is an intermediate product and not the final product which is exported and since electricity is exempt from GST, the ITC of the tax paid on coal for generation of electricity is not available ?

Clarification : There is no distinction between intermediate goods or services and final goods or services under GST. Inputs have been clearly defined to include any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Since coal is an input used in the production of aluminium, albeit indirectly through the captive generation of electricity, which is directly connected with the business of the registered person, input tax credit in relation to the same cannot be denied.

(c) *Issue* : A registered person avails ITC of compensation cess (say, of Rs. 100) paid on purchases of coal every month. At the same time, he reverses a certain proportion (say, half, i.e., Rs. 50) of the ITC of compensation cess so availed on purchases of coal which are used in making zero rated outward supplies. Both these details are entered in the *FORM GSTR-3B* filed for the month as a result of which an amount of Rs. 50 only is credited in the electronic credit ledger. The reversed amount (Rs. 50) is

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then shown as a "cost" in the books of accounts of the registered person. However, the registered person declares Rs. 100 as "Net ITC" and uses the same in calculating the maximum refund amount which works out to be Rs. 50 (assuming that export turnover is half of total turnover). Since both the balance in the electronic credit ledger at the end of the tax period for which the claim of refund is being filed and the balance in the electronic credit ledger at the time of filing the refund claim is Rs. 50 (assuming that no other debits/credits have happened), the system will proceed to debit Rs. 50 from the ledger as the claimed refund amount. The question is whether the proper officer should sanction Rs. 50 as the refund amount or Rs. 25 (i.e., half of the ITC availed after adjusting for reversals) ?

Clarification : ITC which is reversed cannot be held to have been "availed" in the relevant period. Therefore, the same cannot be part of refund of unutilized ITC on account of zero-rated supplies. Moreover, the reversed ITC has been accounted as a cost which would have reduced the income-tax liability of the claimant. Therefore, the same amount cannot, at the same time, be refunded to him/her in the ratio of export turnover to total turnover. However, if the said reversed amount is again availed in a later tax period, subject to the restriction under section 16(4) of the TNGST Act, it can be refunded in the ratio of export turnover to total turnover in that tax period in the same manner as detailed in para 9(a) above. This is subject to the restriction that the accounting entry showing the said ITC as cost is also reversed.

Non-consideration of ITC of GST paid on invoices of earlier tax period availed in subsequent tax period :

10. Presently, ITC is reflected in the electronic credit ledger on the basis of the amount of the ITC availed on self declaration basis in *FORM GSTR-3B* for a particular tax period. It may happen that the goods purchased against a particular tax invoice issued in a particular month, say August 2017, may be declared in the *FORM GSTR-3B* filed for a subsequent month, say September, 2017. This is inevitable in cases where the supplier raises an invoice, say in August, 2017, and the goods reach the recipient's premises in September, 2017. Since GST law mandates that ITC can be availed only after the goods are received, the recipient can only avail the ITC on such goods in the *FORM GSTR-3B* filed for the month of September, 2017. However, it has been observed that field officers are excluding such invoices from the calculation of refund of unutilized ITC filed for the month of September, 2017.

11. In this regard, it is clarified that "Net ITC" as defined in rule 89(4) of the TNGST Rules means input tax credit availed on inputs and input

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services during the relevant period. Relevant period means the period for which the refund claim has been filed. Input tax credit can be said to have been "availed" when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in *FORM GSTR-3B*. Further, section 16(4) of the TNGST Act stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August, 2017, "availed" in September, 2017 cannot be excluded from the calculation of the refund amount for the month of September, 2017.

Misinterpretation of the meaning of the term "inputs" :

12. It has been represented that on certain occasions, Departmental Officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the claimant.

13. In relation to the above, it is clarified that the input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act. The GST paid on inward supplies of stores and spares, packing materials, etc., shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the TNGST Act. Further, capital goods have been clearly defined in section 2(19) of the TNGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

Refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure :

14. Section 54(3) of the TNGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of

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