IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.8213 of 2020(O&M)

Date of Decision:-18.06.2020

Amba Industrial Corporation.

.....Petitioner.

Versus

Union of India & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

Present:- Mr. Deepak Gupta, Advocate for the Petitioner.

***

JASWANT SINGH, J.

Hearing conducted through Video Conferencing.

1. The Petitioner through instant petition is challenging vires of Rule 117(1A) of Central Goods and Service Tax Act, 2017 (for short 'Rules') and seeking direction to Respondent to permit Petitioner to electronically upload form TRAN-I or avail input tax credit (for short 'ITC') in monthly return GSTR-3B.

2. The Petitioner-a partnership firm, engaged in the business of trading of S.S. Flats, is registered with Respondent-GST Authorities under Central Goods and Services Tax Act, 2017 (for short 'CGST Act'). The Petitioner prior to 01.07.2017 i.e. date of introduction of GST was registered under Central Excise Act, 1944 as a dealer/trader. The Petitioner purchased S.S. Flats and Scrap on payment of Excise Duty amounting to

Rs.10,36,201/-. The Petitioner to carry forward unutilized CENVAT Credit, in terms of Section 140 of CGST Act read with Rule 117 (1) was required to upload TRAN-I on the official portal of Respondent, however Petitioner failed to upload TRAN-I by last date i.e. 27.12.2017. 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 07.02.2020 **(Annexure P-3)** has extended date for filing TRAN-I till 31.03.2020.

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. Vs Union of India** 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 Ltd. and others vs. Union of India** 2020-TIOL-900-HC-Del-GST following decision of this Court and various other High Courts has permitted Petitioners to file TRAN-I on or before 30.06.2020. Delhi High Court has further directed Respondents to permit all other similarly situated tax payers to file TRAN-I on or before 30.06.2020. Delhi High Court has further vide order dated **16.06.2020** in **SKH Sheet Metals Components vs. Union of India** WP(C) 13151 of 2019 approved its earlier opinion in the case of **Brand Equity** and permitted Petitioners to file TRAN-I till 30.06.2020.

4. Notice of motion.

5. Mr. Satya Pal Jain, Additional Solicitor General assisted by Mr.

Dheeraj Jain, Advocate accepts notice on behalf of respondent no.1 while Mr. Sharan Sethi, Senior Standing Counsel accepts notice for respondent no.2-Commissioner of Central Goods & Services Tax. 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. (Supra**) and of the Delhi High Court in the case of **Brand Equity (Supra**).

6. Having heard learned Counsel for the parties and perused the cited judgments, we are of the considered opinion that 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 4.11.2019 allowed a bunch of petitions which included CWP No. 30949 of 2018 titled as **Adfert Technologies Pvt. Ltd. Vs Union of India.** The revenue assailing decision of this court filed SLP before Hon'ble Supreme Court which stands dismissed vide order dated 28.02.2020. Following opinion in **Adfert Technologies (Supra)** a number of writ petitions involving identical question have been disposed of by this Court, wherein Respondents have been directed to open portal so that assessee may upload TRAN-I and in case 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 vs. Union of India** WP(C) 13151 of 2019, vide order dated 16.06.2020 has permitted Petitioner to revise TRAN-I on or before 30.06.2020. Delhi High Court while passing aforesaid order has relied upon its recent decision in **Brand Equity Treaties Ltd. and others vs. Union of India** (Supra) 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 Delhi High Court in **Brand Equity**:

> **"18.** In above noted circumstances, the arbitrary classification, introduced by way of sub Rule (1A), restricting the benefit only to taxpayers 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/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 assesee/tax payer 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 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 (supra) 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 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 Rules, however we do not think it appropriate to declare it invalid as we are of the considered opinion that Petitioner is entitled to carry forward Cenvat Credit accrued under Central Excise Act, 1944. The Respondents have repeatedly

extended date to file TRAN-I where there was technical glitch as per their understanding. Repeated extensions of last date to file TRAN-I in case of technical glitches as understood by 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-I 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. (Supra)** and Delhi High Court in the case of **Brand Equity Treaties Ltd. (Supra)** present petition deserves to be allowed and accordingly **allowed.** The Respondents are directed to permit Petitioner to upload TRAN-I on or before 30.06.2020 and in case 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 Petitioner.

(**JASWANT SINGH**)
JUDGE

(**SANT PARKASH**)
JUDGE

June 18, 2020
Vinay

Whether speaking/reasoned	*Yes7No*
)Vhether Reportable	*Yes7No*