

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 2409 of 2019**

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DOWNTOWN AUTO PVT. LTD

Versus

UNION OF INDIA

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Appearance:

for the Petitioner(s) No. 2

UCHIT N SHETH(7336) for the Petitioner(s) No. 1

MR PY DIVYESHVAR(2482) for the Respondent(s) No. 2

NOTICE UNSERVED(8) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 19/02/2020

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. By this petition under Article 226 of the Constitution of India,
the petitioners have prayed for the following reliefs :

“A. This Hon’ble Court may be pleased to issue a writ of mandamus or a writ in nature of mandamus or any other appropriate writ, order or direction quashing and setting aside impugned notice dated 18.12.2018 (annexed at Annexure A) issued by the learned Respondent No.2;

B. This Hon’ble Court may be pleased to hold and declare that transitional input tax credit is admissible to the Petitioners under Section 140(3) of the GST Act on the basis of copy of excise invoices of the manufacturer in respect of such goods even though the vehicles were not directly purchased by the Petitioners from the manufacturer and the excise

invoices are in the name of the vendors of the Petitioners;

C. Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to restrain the learned Respondents from making coercive recovery qua the transitional input tax credit claimed by the Petitioners in Form GST TRAN 1;

D. Ex parte ad interim relief in terms of prayer C may kindly be granted;

E. Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioners shall forever pray."

2. The petitioner No.1 is a Pvt. Ltd. Company incorporated under the provisions of the Companies Act, 1956 and has filed through its director i.e. petitioner No.2. The petitioners are authorised dealers of Honda Cars India Pvt. Ltd. The petitioners also purchased vehicles directly from the manufacturer as well as through other authorized dealers. As the petitioners are not engaged in manufacturing activity, the petitioners were not covered under the provisions of the Central Excise Act, 1944 though the vehicles purchased by the petitioners have borne excise duty paid by the manufacturer.

2.1. It is the case of the petitioners that when the Central Goods and Service Tax Act, 2017 (for short, "**CGST Act, 2017**") was implemented w.e.f. 1st July 2017, it subsumed Central Excise as well as the Value Added Tax. The petitioners were having cars

and spare parts in the stock as on 30th June 2017 out of which, some cars were purchased directly from the manufacturer while remaining were purchased from other authorized distributors, who had in turn purchased them from the manufacturers.

2.2. According to the petitioners, the petitioners were liable to pay goods and service tax under the CGST Act, 2017 on the supply of goods, which was with the petitioners in stock as on 30th June 2017.

2.3. The petitioners were required to pay tax by way of GST on the goods on which the manufacturer had already paid excise duty in order to mitigate eventuality of double taxation in so far as the goods in stock as on 30th June 2017 were lying with the registered person under the GST regime. Section 140 (3) of the CGST Act, 2017 provided for transitional credit and accordingly a person is entitled to credit of duty in respect of inputs held in stock or contained in finish or semi-finish goods provided that that person has in his possession invoice or other prescribed duty paying documents. Even in case of a trader who does not have invoice or other prescribed duty paying documents in his possession, Proviso to Section 140(3) of the CGST Act, 2017 enables him to take deemed credit as prescribed in the Rules framed under the CGST

Act, 2017.

2.4. The petitioners, therefore, claimed the credit of transitional credit by filing prescribed Form-GST-TRAN-1 with regard to the Excise Duty paid by the manufacturers on the vehicles and spare parts held in stock by the petitioners as on 30th June 2017.

2.5. It appears that petitioners received a notice dated 15th June 2018 from the Superintendent of CGST & Central Excise (Respondent No.2) requiring documents for verification of transitional credit claimed by the petitioners. The petitioners thereafter, submitted the documents on 29th June 2018. It is also furnished further documents pursuant to the notices dated 10.09.2018 and 04.10.2018 along with reply dated 08.10.2018. The petitioners were orally informed by the respondent-authority that documents supplied by the petitioners were sufficient in so far as vehicle purchased from the manufacturer were concerned, but, in so far as the purchases made by the petitioners from other dealers are concerned, excise invoices or credit transfer documents are required in the name of the petitioners.

2.6. The respondent No.2 was also issued a Notice dated 18.12.2018 calling upon the petitioners to provide credit transfer

documents or vouchers from the dealers from whom the petitioners purchased vehicle with regard to Rs.13,67,893/- and with regard to spare parts for the credit claimed by the petitioners amounting to Rs.2,52,329/-.

2.7. The petitioners by letter dated 25th January 2019, submitted that it was not possible to get the excise invoice or duty paying documents in the name of the petitioners with regard to vehicle purchased from the dealers. The petitioners however, pointed out that the excise invoice showing payment of excise duty of the goods in stock of the petitioners as on 30th June 2017 issued in the name of the vendor of the petitioners were already submitted, wherein the chassis number of the vehicles are also mentioned. The petitioners therefore, being aggrieved by the notice dated 18.12.2018 has filed this petition with the aforesaid prayers.

3. On 06.02.2019, this Court passed the following order :

“1. Mr. Uchit Sheth, learned advocate for the petitioner has invited the attention of the court to the provisions of section 140 of the Central Goods and Services Tax Act, 2017 and more particularly sub-section (3) thereof, which inter alia provides that a registered dealer as described therein, a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take credit of eligible duties in respect of inputs held in stock on the appointed day, subject to the conditions enumerated thereunder. It was submitted that all the five conditions enumerated under sub-section (3) of section 140 of the Act are satisfied by the petitioner. Referring to clause (iii) of sub-

section (3) of section 140 of the Act, it was submitted that the same provides that the said registered person should be in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs. It was submitted that in the facts of the present case, no documents have been prescribed under the Central Goods and Services Tax Rules; under the circumstances, when the petitioner has produced documents evidencing payment of duty, he is entitled to the credit in respect thereof.

2. Having regard to the submissions advanced by the learned advocate for the petitioner, Issue Notice returnable on 27th February, 2019. By way of ad-interim relief, the respondents are restrained from making any coercive recovery against the petitioner in connection with the subject matter of this petition. Direct Service is permitted qua respondent No.2 only.”

4. Mr. Uchit N. Sheth, the learned advocate for the petitioners submitted that as per provisions of Section 140 (3) of the CGST Act, 2017, petitioners are entitled to get the credit of the excise duty paid on the vehicles stock of the petitioners. The petitioners have submitted all the documents in their possession to claim such credit and insistence on the part of the respondents to provide the documents to show the documents for payment of excise duty in the name of the petitioners, which is not possible in case of vehicle purchased from dealers.

4.1. Mr. Sheth, the learned advocate of the petitioners submitted that the respondent authorities are relying upon the Notification No.21/2017 dated 30th June 2017 issued under Rule 15(2) of the

CENVAT Credit Rules, 2017 providing to obtain Credit Transfer Documents (CTD), but it is not possible for the petitioners to obtain such CTD as no such procedure for documents is prescribed by Section 140(3) of the CGST Act, 2017. It was submitted that as the petitioners were not registered under the Excise law and they were not aware about the such procedure of obtaining CTD from the dealer or manufacturer relating to the goods held in stock as on 30th June 2017, the requirement of Section 140(3) of the CGST Act is duly complied with.

4.2. It was further submitted that the petitioners are not bound by the CENVAT Credit Rule 2017 or the Notification No. 21/2017 for claiming transitional credit as per provisions of Section 140(3) of the CGST Act, 2017 as the petitioners have fulfilled all the conditions contained in Section 140(3) of the CGST Act, 2017 and as such the petitioners are entitled to get the transitional credit claimed by it, in respect of the excise duty paid on the vehicles purchased from the dealers by the petitioners prior to 30th June 2017.

4.3. Learned advocate for the petitioners submitted that the excise duty is not paid by the petitioners on such vehicles which were purchased from other dealer(s) as it is mandatory on the part

of the manufacturer to pay the excise duty prior to sale of the goods as per the provisions of the Central Excise Act, 1944. It was, therefore, submitted that in such circumstances, if the petitioners are not granted transitional credit, it would amount to double taxation, which is contrary to the intent and purpose of Section 140(3) of the CGST Act., 2017

4.4. Mr. Sheth further submitted that the interpretation as canvassed by the respondent-authority is contrary to the object and purpose of the transitional credit provision, which is meant to avoid double taxation in case where goods contained in stock have already borne the tax under the earlier tax regime.

4.5. Learned advocate for the petitioners therefore, prayed that the respondents be directed to grant the transitional credit as claimed by the petitioners.

5. On the other hand, Mr. P.Y. Divyeshwar, the learned advocate for the respondents vehemently opposed the petition and relying upon the averments made in Affidavit-in-Reply filed on behalf of the respondents, it was contended that the petition is not maintainable, as the petitioners have challenged the notice requiring the petitioners to submit details only and the verification

with regard to the claim made by the petitioners for transitional credit is still pending by the Adjudicating Authority. It was submitted that the verification is required only with regard to credit of Rs. 13,67,893/- claimed by the petitioners on the basis of the invoices issued by the dealers on which value added tax was paid. It was submitted that there is no dispute on the admissibility of the credit in respect of Rs. 38,55,020/- where the invoice issued by the manufacturers in the name of the petitioners are available.

5.1. Learned advocate for the respondents submitted that Rule 15 of CENVAT Credit Rules, 2017, which have come into effect from 30th June 2019 provides for transitional provisions and the Notification No.21/2017 dated 30th June 2017 issued under Sub-Rule 2 of Rule 15 of the CENVAT Credit Rules, 2017 prescribes procedure to claim transitional credit in respect of the stock lying with a trader on 30th June 2017.

5.2. It was, therefore, submitted that the petitioners are liable to follow the prescribed procedure as per Notification No.21/2017 and avail the transitional credit only if such procedure of getting 'CTD' from the manufacturer is followed.

5.3. Learned advocate for the respondents relied upon the

following two decisions of the Supreme Court in support of his submissions :

(i) The Supreme Court in the case of **J.K. Housing Board and Anr. v. Kunwar Sanjay Krishan Kaul and Ors.** reported in (2011) 10, SCC 714, held as under :

“21----- It is settled law that when any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefor in the act” and also the Hon’ble Apex Court in the matter of state through P.S. (Police Station), Lodhi Colony, New Delhi Vs. Sanjeev Nanda reported in (2012) (8) of SCC 450 again ruled that “it is settled Principal of law that if something is required to be done in a particular manner then that has to be done only in that way or not, at all”.

(ii) Reliance was placed on the decision of the Supreme Court in the case of **Indian Aluminium Company Limited v. Thane Municipal Corporation** reported in 1991 (55) E.L.T. 454 (S.C.), wherein the Supreme Court has held that non-observance of even a procedural condition cannot be condoned because it is likely to facilitate commission of fraud and introduce administrative inconveniences:

[“In Kedarnath Jute Manufacturing Co. v. Commercial Tax Officer, Calcutta and Ors. \[1965\] 3 SCR 626](#) "There is an

understandable reason for the stringency of the provisions. The object of Section 5(2) (a) (ii) of the Act and the rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers' of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will well-nigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the two-fold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative inconveniences, both of which the provisions of the said clause seek to avoid."

5.4. Relying upon the aforesaid decisions, it was submitted that the petitioners are required to follow the prescribed procedure of getting CTD in his name from the manufacturer so as to avail transitional credit, failing which, the petitioners are not entitled to transitional credit. It was therefore submitted that the respondent-authorities have rightly initiated the inquiry against the petitioners

as per Rule 121 of the CGST Rules, 2017. It was therefore, prayed that the petition is required to be dismissed being devoid of any merits.

6. Having heard the learned advocates for the respective parties and having gone through the materials on record, it appears that the petitioners were having vehicles and spare parts in the stock as on 30th June 2017. The petitioners, therefore, claimed transitional credit in view of the provisions of Section 140(3) of the CGST Act, 2017, which reads as under :

“Section 140. Transitional arrangements for input tax credit.

(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 the 20th June, 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.

7. On perusal of the aforesaid provisions, it is clear that they nowhere provide for the petitioners to submit any CTD to claim the transitional credit.

8. As far as the reliance placed on behalf of the respondents on the CENVAT Credit Rules, 2017 and the Notification No.21/2017 is concerned, it is true that the Notification No.21/2017 issued under Sub-Rule 2 of Rule 15 of CENVAT Credit Rules, 2017 prescribes procedure to avail the transitional credit of CENVAT by a dealer or a trader, who was not registered under the Central Excise Law. Rule 15 of the CENVAT Credit Rules reads thus :

“RULE 15. Transitional Provisions. — (1) A person

registered under the Central Goods and Services Tax Act, 2017 (12 of 2017) shall transfer the entire CENVAT credit available under the CENVAT Credit Rules, 2004 relating to the period ending with the day immediately preceding the 1st day of July, 2017 in his electronic credit ledger as per Chapter XX of the Central Goods and Services Tax Act, 2017 (12 of 2017) and the rules made thereunder, and any CENVAT credit which is not eligible for such transfer shall not be retained as CENVAT credit unless eligible under these rules.

(2)(a) Notwithstanding anything contained in these rules, a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017), who was not required to register under the Excise Act shall be deemed to be in possession of a document evidencing payment of duty, if the manufacturer of the specified goods on which duty of Central Excise was leviable has issued a credit transfer document to him, in relation to such specified goods held in stock by him on 1st of July, 2017, for which he was not in a possession of invoice evidencing payment of duty.

(b) The credit transfer document under clause (a) shall be issued by the manufacturer of specified goods subject to such conditions, procedures and safeguards as may be notified by the Central Government.

Explanation. - *“Specified goods” for the purpose of sub-rule (2) shall mean such goods which have a value more than rupees twenty five thousand per piece and bear the brand name of the manufacturer or the principal manufacturer and are identifiable by a distinct number such as chassis or engine number of a car.*

9. On perusal of the aforesaid Rule 15 and more particularly explanation thereto, it appears that “Specified goods” for the sub-rule (2) would mean such goods which have a value more than rupees twenty five thousand per piece and bear the brand name of the manufacturer or the principal manufacturer and are identifiable by a distinct number such as chassis or engine number of a car.

9.1. Sub-Rule 2 provides that a person registered under the Central Goods and Services Tax Act, 2017, who was not required to register under the Excise Act shall be deemed to be in possession of a document evidencing payment of duty, if the manufacturer of the specified goods on which duty of Central Excise was leviable has issued a credit transfer document (CTD) to him, in relation to such specified goods held in stock by him on 1st of July, 2017.

10. In the facts of the case, the petitioners are not having CTD, but have produced on record the copies of the invoice received from the dealers along with copies of invoice issued by the manufacturer of the cars or spare parts (as applicable) in name of the dealers showing the payment of excise duty along with the Chassis Number of cars (in case of cars).

11. Therefore, even though the petitioners are not having CTD the respondent-authorities can very well verify the payment of excise duty on the cars purchased by the petitioners from the dealers and on spare parts on the basis of documents submitted by the petitioners.

12. In such circumstances, the respondents are required to

consider the documents furnished by the petitioners in support of the claim of transitional credit with regard to cars and spare parts lying in the stock of the petitioners as on 30th June 2017 like invoices bearing the name of petitioners issued by the dealer and the invoices issued by the manufacturers in name of the dealer with details such as Chassis Number of the car in case of cars. If the respondents are satisfied on basis of such documents that the excise duty has been paid by the manufacturer, the excise duty paid should be allowed as transitional credit in the hands of the petitioners.

13. For the foregoing reasons, the petition is disposed of with the following directions to meet the ends of justice.

13.1. The respondents are directed to verify the claim made by the petitioners for transitional credit on basis of the said documents submitted by them in respect of the cars and spare parts that whether excise duty is already paid by the manufacturer. If the respondent-authority is satisfied on the basis of the aforesaid verification, the transitional credit claimed by the petitioners under Section 140(3) of the CGST Act is to be allowed, otherwise claim of the petitioners would fail.

13.2 Such exercise shall be carried within a period of three months from the date of receipt of writ of this order.

14. In view of the aforesaid directions, the petition is disposed of with no order as to costs.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

KUMAR ALOK

