

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION (ST.) NO.3705 OF 2020**

Heritage Lifestyles and Developers      ...Petitioner  
and Private Limited  
A Company incorporated under the  
Companies Act, 1956 having its  
office at Plot No. 29, D.K. Sandhu  
Marg, Opposite Sai Baba temple,  
Chembur, Mumbai - 400 071  
through its Authorized  
Representative  
Ms. Gayatri Gor.

*Versus*

1. The Union of India through the      ...Respondents  
Revenue Secretary Ministry of  
Finance Department of Revenue  
North Block New Delhi - 110 001.

2. Central Board of Indirect Taxes and  
Customs Ministry of Finance North  
Block New Delhi - 110 001.

3. State of Maharashtra  
Through the Secretary Ministry of  
Finance  
Department of Revenue, Mantralaya  
Mumbai - 400 001.

4. Goods and Service Tax Council  
GST Council Secretariat  
5<sup>th</sup> Floor, Tower II,  
Jeevan Bharti Building,  
Janpath Road,

Connaught Place,  
New Delhi – 110 001.

5. Deputy Commissioner  
of CGST & Central Excise  
Division-I, Range – III  
Navi Mumbai,  
16<sup>th</sup> Floor, Satra Plaza,  
Sector 19D, Palm Beach Road  
Vashi, Navi Mumbai – 400 705.

6. Superintendent (Computers)  
CGST & Central Excise  
Navi Mumbai  
16<sup>th</sup> Floor, Satra Plaza,  
Sector 19D, Palm Beach Road  
Vashi, Navi Mumbai – 400 705.

7. Superintendent of CGST & Central  
Excise, Range-III  
Division-I, Navi Mumbai,  
16<sup>th</sup> Floor, Satra Plaza,  
Sector 19D, Palm Beach Road  
Vashi, Navi Mumbai – 400 705.

8. Deputy Commissioner of GST  
& Central Excise, Mumbai Zone  
115, New Central Excise Building  
M. K. Road, Churchgate  
Mumbai – 400 020.

9. Commissioner of CGST & Central  
Excise, Navi Mumbai,  
16<sup>th</sup> Floor, Satra Plaza,  
Sector 19D, Palm Beach Road  
Vashi, Navi Mumbai – 400 705

10. Chief Commissioner of GST &  
Central Excise, Mumbai Zone

115, New Central Excise Building  
M. K. Road, Churchgate  
Mumbai - 400 020.

11. Commissioner of State  
Tax, GST Bhavan,  
Mazgaon, Mumbai

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Mr. Bharat Raichandani i/b M/s UBR Legal - Advocate for  
the Petitioner.

Mr. Pradeep S. Jetly, Senior Advocate with Mr. Jitendra  
Mishra -Advocates for the Respondent Nos. 1,2 and 4 to  
10.

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**CORAM : UJJAL BHUYAN AND  
ABHAY AHUJA, JJ.**

**RESERVED ON : 29<sup>th</sup> OCTOBER, 2020.**

**PRONOUNCED ON : 5<sup>th</sup> NOVEMBER, 2020.**

**(THROUGH VIDEO CONFERENCING)**

**ORDER (PER ABHAY AHUJA) :**

1. Heard. Rule. Rule made returnable forthwith. By  
the consent of the Counsel for the parties, the matter is  
taken up for final hearing.

2. Being aggrieved and dissatisfied by the inaction on  
the part of the Respondent authorities in not giving

Input tax credit to the claim of the Petitioner pursuant to the Board Circular No. 39/13/2018-GST dated 3<sup>rd</sup> April, 2018, the Petitioner has sought to not only challenge the said inaction but also to challenge the vires of Rule 117 and Rule 118 of the Central Goods and Service Tax Rules, 2017 as null and void and ultra vires Section 140 (1), Section 140 (3) and Section 9 of the Central Goods and Services Tax Act, 2017 and Article 14, 19, 246, 248, 265, 268A, 286 and 302 read with entry 41 and 83 of list 1 of Schedule VII of the Constitution of India and as also being beyond the legislative competence of the Parliament under Article 269-A of the Constitution of India and has prayed for the following reliefs:-

*(a) that this Hon'ble Court may be pleased to issue Any writ, order or direction more particularly in the nature of a Writ of Declaration to declare Rule 117 and Rule 118 of Central Goods and Service Tax rules 2017 as null, void and ultra vires of Section 140(1), Section 140(3) and Section 9 of Central Goods and Service tax Act 2017 and Article 14, 19, 246, 248, 265, 268A, 286 and 302 read with Entry 41 and 83 of List 1 of VII Schedule of the Constitution of India and as also being beyond the legislative competence of Parliament under Article 269A of*

*the Constitution of India in so far as it is impugned and pass such further or other orders as this Hon'ble Court may deem fit and necessary in the facts and circumstance of the case and thus render justice;*

*(b) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions, direct the Respondents to pass such directions to allow the petitioner to file Tran-1 electronically and carry forward the eligible cenvat credit in the electronic credit ledger/ Input tax credit account;*

*(c) that this Hon'ble Court be pleased to issue a writ of mandamus or any other writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner case and direct Respondents to either accept copy of TRAN-1 in physical form and give*

*due credit from back end or allow to file the declaration under TRAN-1 electronically and reflect the said input tax credit in the electronic credit ledger / input tax credit account.*

3. It is submitted that the Petitioner is a Private limited company, *inter-alia* engaged in the business of construction and development of real estate for the purpose of sale to prospective buyers and is registered as a dealer under the provisions of the Maharashtra Value Added Tax Act, 2002 (the “MVAT Act”) as well as registered under the provisions of the Central Goods and Services Tax Act, 2017 (“CGST Act”) as a ‘service provider’ and also as “registered dealer”.

4. It is submitted that under the pre-GST regime, the Petitioner was paying Service tax on the services and filing returns. It was therefore availing credit/set off of service tax paid on input service. Under the pre-GST regime, the Petitioner was also paying MVAT on the sale of goods, filing returns and also availing credit/set off of MVAT.

5. Post introduction of the CGST Act, 2017 with effect from 01.07.2017, pursuant to the transitional provisions

contained in Chapter XX of the CGST Act, 2017 as well as under Chapter XX of the Maharashtra Goods and Services Tax Act, 2017 (“MGST Act”), the Petitioner was entitled to carry forward Input tax credit as on 30.06.2017 in the TRAN-1 form for the period from 01.07.2016 to 30.06.2017 totaling an amount of Rs. 79,44,237.61/-, under Section 140 of the CGST Act read with Rule 117 of the CGST Rules and Rule 118 of the MGST Rules.

6. Petitioner submits that Section 140 of the CGST Act read with Rule 117 of the CGST Rules requires a migrated registered supplier to file a declaration (in electronic form) under form TRAN-1 intimating/disclosing details of CENVAT credit of tax paid on inputs, capital goods, input services in order to carry forward the same to the electronic credit ledger/input tax credit account under the CGST Act, 2017. The declaration/form was required to be filed within a period of 90 days from the appointed date i.e. 01.07.2017, which time limits were extended to 27.12.2017, then to 31.03.2019 and finally to 31.12.2019. It is submitted that the said form TRAN-1 was notified in August, 2017 and the online functionality to file the said form was deployed on GST portal only on 21.08.2017.

7. It is submitted that the Petitioner could not file the TRAN-1 by 27.12.2017 due to lack of awareness of the procedures, technical glitches, GST being new and a complex system to operate. The Petitioner has annexed screenshot being Exhibit-H to the Petition to demonstrate technical glitches.

8. It is submitted by the Petitioner that upon inquiry about the form TRAN-1, the Petitioner was assured that sufficient time would be provided and further extension beyond 27<sup>th</sup> December, 2017 would be granted as there were lots of other extensions taking place in the implementation of various modules/forms of GST.

9. Petitioner then wrote a letter dated 7.5.2018 to Respondent No. 5 informing the latter that it was unable to fill up and file TRAN-1 form within the appointed due time. Petitioner also drew the attention of Respondent No. 5 towards CBIC Circular dated 3.4.2018, wherein opportunity to file TRAN-1 was given to all assessees who were unable to file the TRAN-1 due to technical difficulties and to make an application for the redressal of grievances. By the said letter, Petitioner provided details as per Circular No. 39/13/2018-GST dated



03.04.2018 and requested Respondent No. 5 to redress its grievances.

10. It is submitted that vide letter dated 18.05.2018, Respondent No. 7 requested the Petitioner for documents/information which were provided to the said Respondent vide letters dated 18.05.2018 and 21.05.2018.

11. It is the case of the Petitioner that vide letter dated 24.05.2018, Respondent No. 7 after due verification of the claim of the Petitioner relating to CENVAT Credit/ITC forwarded the application for further disposal to Respondent No. 8 *inter-alia* stating that the application has been filed by the tax payer on 7.5.2018, which was within the stipulated date i.e. 10.05.2018 as extended by the Bombay High Court.

12. It is submitted that vide E-mail dated 18.09.2018, Respondent No. 5 wrote to the GSTN Nodal Officer seeking to know the status of the application.

13. Further by letter dated 25.09.2018, Petitioner wrote letter to Respondent No. 9 stating that since it

was unable to file TRAN-1 due to technical glitches it had submitted TRAN-1 manually for verification and requested Respondent No. 9 to activate TRAN-1 portal to enable Petitioner to file TRAN-1 electronically and to claim credit in electronic credit ledger.

14. Vide letters dated 11.12.2018, 12.12.2018 and 31.03.2019, Petitioner sent reminders to the Respondents with respect to its application made pursuant to the CBIC circular dated 3.04.2018.

15. Petitioner submits that since the Petitioner has not received any clarity from the Respondents with regard to the carry forward of the CENVAT credit in respect of its application, it has been left with no option but to file the present Petition as a result of the hardship caused to the Petitioner. Petitioner has also raised grounds challenging the vires of Rule 117 and Rule 118 of the CGST Rules as ultra vires Sections 140 (1), 140 (3) and Section 9 of the CGST Act as well as ultra vires the Constitution of India as mentioned above.

16. Respondents have filed reply submitting that the issue involved in the Petition is no more *res-integra* and is covered by the Judgment dated 20.03.2020 passed

by this Court in the case of ***NELCO Limited V/s Union of India and Ors. (Writ Petition No. 6998 of 2018)***.

It is submitted that Petitioner's application for manual GST TRAN-1 dated 7.5.2018 pursuant to the Board Circular No 39/13/2018-GST dated 3<sup>rd</sup> April, 2018 was sent for verification to the Additional Commissioner, Nodal Officer IT Grievance Redressal (ITGRC) Mechanism , CCO, CGST and Central Excise, Mumbai Zone for further action. However, the Petitioner's application was not approved by the ITGRC under the category description *"The Tax Payer has neither tried for saving/submitting or filing TRAN-1"*.

17. In the affidavit-in-reply it has also been stated that though the Petitioner was found to be eligible for credit amounting to Rs. 78,62,466/-, it was denied by ITGRC as there was no log of such attempt made by it.

17.1. Petitioner has filed affidavit in rejoinder stating that the NELCO decision (*Supra*) is not applicable to the facts of the present case as the same are distinguishable on facts.

18. Mr. Raichandani, learned counsel for the Petitioner has specifically drawn our attention to Exh. "N" to the Writ Petition being communication dated 24.5.2018 to

submit that the application of the Petitioner for manual GST TRAN-1 in terms of the said circular dated 3.4.2018 which has been filed within time has been verified by the jurisdictional office. He would submit that when Respondents themselves have verified the input tax credit due to the Petitioner and when the Respondents themselves have found that the Petitioner is eligible for credit amounting to Rs. 78,62,466/-, then a technicality raised by ITGRC cannot deprive the Petitioner of the due credit in its credit ledger and prays that this Petition be accordingly allowed. Learned counsel for the Petitioner has relied upon the Supreme Court decision in the case of ***Mangalore Chemicals and Fertilizers Ltd. Vs. Deputy Commissioner [1991 (55) ELT 437 (SC)]***.

19. On the other hand, Mr. Jetley, learned counsel for the Respondents would submit that the said circular has been issued only to address the difficulties due to technical glitches on the GST Portal in respect of tax payers who were not able to complete TRAN-1 procedure before 27.12.2019 which is not the case of the Petitioner here. He reiterates that in fact ITGRC has clearly denied eligibility of input tax credit to the Petitioner on the ground that the tax payer has neither tried for saving/submitting or filing TRAN-1.

20. We have heard learned counsel Shri Bharat Raichandani for the Petitioner and Shri Pradeep Jetley alongwith Shri J. B. Mishra for the Respondents. We have also perused the papers and proceedings in this Petition.

21. This is a case, where admittedly Petitioner could not file GST TRAN-1 on or before 27.12.2017 but had manually applied for GST TRAN-1 on 7.5.2018 as per Circular dated 03.04.2018 within the timeline as per the date extended by this Court. Also admittedly the Respondents have found the Petitioner to be eligible for credit amounting to Rs. 78,62,466/-. But the credit for the same has been denied as the ITGRC found that the Petitioner has not tried to save or submit or file TRAN-1 before 27.12.2017. We are informed by the learned counsel for the Petitioner which is not controverted by the learned Sr. counsel for the Respondents that this information of rejection of the Petitioner's application for manual GST TRAN-1 has not been communicated to the Petitioner despite several reminders/communications from the Petitioner and it is only by way of the affidavit in reply filed to this Petition that the Petitioner has become aware of the rejection.

22. Be that as it may, it is true that the above circular has been issued keeping in mind cases where difficulties have been faced by a section of tax payers owing to technical glitches on the GST Portal. However, the facts of this case are peculiar in as much as the respondents themselves admitted that the Petitioner is eligible for input tax credit but have rejected the claim because the ITGRC has not approved it saying that the tax payer has neither tried for saving/submitting or filing TRAN-1. There is no further explanation or clarification on this issue by the Respondents except to state the ITGRC description viz. ***“The tax payer has neither tried for saving/submitting or filing TRAN-1”***. Therefore it would be not necessary for us to even deal with the Circular under which the application for manual TRAN-1 has been made. When there is no dispute to the fact that the Petitioner is otherwise eligible for credit of Rs. 78,62,466/- then to deny the benefit of such Input credit merely on technical grounds cannot be justified. Merely on technical ground an admitted input credit is sought to be denied to the Petitioner. That according to us would be wholly unfair and a travesty of justice. It is in these facts and circumstances that we are compelled to invoke our writ jurisdiction in this case.

23. In this context, we would like to refer to the Supreme Court decision in the case of ***Mangalore Chemicals and Fertilizers Ltd. Vs. Deputy Commissioner (Supra)***. That was a case where there was no dispute that the appellant was entitled to the benefit of an exemption under notification dated 30.06.1969 nor there was a dispute that the refunds were eligible to the adjusted against sales tax payable for respective years, but the only controversy was whether the appellant not having actually secured “prior permission” would be entitled to adjustment having regard to the words of notification of 11<sup>th</sup> August 1975, that until permission of renewal is granted by the Deputy Commissioner of Commercial Taxes, the new industry should not be allowed to adjust the refunds. Hon’ble Supreme Court aptly summarized the contention as under :-

***“The contention virtually means this :  
 “No doubt you were eligible and entitled to make the adjustments. There was also no impediment in law to grant you such permission. But see language of Clause 5. Since we did not give you the permission you cannot be permitted to adjust” Is this the effect of the law?”***

24. After considering the arguments of the counsel and after considering its own decisions in various cases

including the decision in the case of ***Kedarnath Jute Manufacturing Co. V/s. Commissioner of Income Tax***, Supreme Court allowed the appeal while quoting Lord Denning [***in the case of Wells Vs. Minister of Housing and Local Government: 1967 (1) WLR 1000***] as under :

***“Now I know that a Public Authority cannot be estopped from doing its public duty, but I do think it can be estopped from relying upon a technicality and this is a technicality”.***

25. Supreme Court also quoted Francis Bennion in his “Statutory Interpretation”, 1984 edition at page 683 as under:

***“Unnecessary technicality : Modern Courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfillment of the purposes of the legislation.”***

26. The above decision and particularly the above quotes to our mind aptly describe the situation at hand.

27. In view of our above discussion, as admittedly in this case the Respondents have found the Petitioner to be eligible for input credit amounting to Rs. 78,62,466/-,



in our view the finding of the ITGRC would in the face of the admission by the Respondents to the amount of credit, would be a mere technicality which cannot come in the way of substantial justice.

28. Accordingly, we direct the Respondents to accept the TRAN-1 filed by the Petitioner and to give the due of input tax credit of Rs. 78,62,466/- in the electronic credit ledger/input tax credit of the Petitioner within two weeks from the date of this order.

29. In view of our above order, we do not consider it necessary to examine the Petitioner's challenge to the vires of Rules 117 and 118 of the Central Goods and Services Tax Rules, 2017.

30. The Petition is accordingly allowed in the above terms. However, there shall be no order as to costs.

31. This order will be digitally signed by the Personal Assistant of this Court. Associate of this Court is permitted to forward the parties copy of this order by e-mail. All concerned to act on digitally signed copy of this order.

**[ABHAY AHUJA, J.]**

**[UJJAL BHUYAN, J.]**