

We are glad to share our GST litigation support communique and get you everything that you need to know from the world of litigation, along with incisive analysis from the CA. Rajat Mohan. This Newsletter brings you key judicial pronouncements from the Supreme Court, various High Courts, AARs, and Appellate Authorities emerging in the GST era and the erstwhile VAT, Service tax, and Excise regime.¹

Synopsis of all changes in GST is given below for your quick reference:

S.N o.	Subject	Autho rity
1	Bail denied to the petitioner who failed to comply with procedures under GST for the payment of revenue to the GST authority	HC
2	A Chartered accountant denied bail in case of issuance of fake GST invoices	HC
3	Where charge sheet has not been filed within 60 days, right of `default bail' accrued to the applicant after completion of 60 days	HC
4	Investigation to be completed within three months	SC
5	Authority to issue directions within four weeks	HC
6	Petitioner permitted either to manually or electronically upload the revised form GST Tran-1 and Tran-2	HC
7	Authorities directed 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	HC
8	Denying the benefit of Input credit merely on technical grounds is not justified when Petitioner is otherwise eligible for the input credit	HC
9	Where the portal was not open due to technical glitches, the authorities were directed to either extend the date of submitting the declaration electronically in FORM GST TRAN-1 or re-open and reinstate the facility of online or manual submission of TRAN-1	HC
10	Appropriate authority directed to consider the application filed by the petitioner	HC

Bail denied to the petitioner who failed to comply with procedures under GST for the payment of revenue to the GST authority.

Petitioner has filed an application with a prayer for enlarging the petitioner on bail against the complaint case under section 69 read with section 132 pending in the Court of learned Additional Chief Judicial Magistrate, Sealdah.

The court observed that there was a default on the part of the petitioner in not complying with procedures under GST for the payment of revenue to the GST authority. Considering the gravity of the offense, the prayer for bail was refused.

Manas Ranjan Pahi, *In re* - [2020] 118 taxmann.com 518 (High court of Calcutta)

A Chartered accountant denied bail in case of issuance of fake GST invoices.

The petitioner has been arraigned as an accused in this case under section 69 read with section 132 on the allegation that in connivance with the other accused persons he allegedly issued GST Invoices without any supply of the goods or services to anybody on commission basis causing loss of more than 98 crores approximately. His earlier bail application was rejected by this Court. He has files application renewing his prayer for bail.

¹ *DISCLAIMER: The views expressed are strictly of the author. The contents of this article are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon.*

Court observed that though Section 69 confers power upon the Commissioner to order the arrest of a person for cognizable and non-bailable offence does not contain safeguard incorporated in section 41 and 41A of the Code of Criminal Procedure, 1973 in view of the provision of section 70(1) of the said Act same must be kept in mind before arresting a person. However, section 41A(3) of the Code of Criminal Procedure does not provide an absolute irrevocable guarantee against arrest, while turning down the prayer for the release of the petitioner on bail and thereby held that petitioner would not be entitled to be enlarged on bail but gave him the liberty to approach the authority for compounding of the offence under section 138 of CGST Act. The petitioner may be released on bail by the trial Court if he finds that he has approached the authority for compounding of the offence on deposit of at least 20% of the evaded amount on account of CGST.

Arvind Kumar Munka v. Union of India - [2020] 119 taxmann.com 259 (High court of Calcutta)

Where charge sheet has not been filed within 60 days, right of 'default bail' accrued to the applicant after completion of 60 days.

A Case was registered at Police Station Commissioner, Central Goods and Service Tax Department, Gwalior M.P., for the offence punishable under section 132. The applicant has been arrested and is in custody since 6-2-2019. His first application for bail was dismissed as withdrawn. The applicant has filed this second application for grant of bail.

The court observed that this is a case where the applicant is facing heat of investigation under section 132 of the Act. Section 132 of the Act prescribes punishment for certain offenses and the maximum sentence which can be awarded, is five years. Section 167 (2) of the Cr.P.C provides 60 days time to the investigating agency to submit charge sheet for the offences where investigation relates to any offence other than total imprisonment for life or imprisonment for a term of not less than 10 years. Here the maximum sentence punishable is imprisonment for five years therefore, the respondent had to file the charge sheet within 60 days. But admittedly, charge sheet has not been filed, therefore, the right of 'default bail' accrued to the applicant after completion of 60 days. It was the duty of the investigating agency to submit a charge sheet within the stipulated period, but same has not happened. Considering the overall fact situation and legal position, the right has been accrued to the applicant. But looking to the nature of allegations, bail can only be granted to the applicant with certain stringent conditions. The applicant was directed to be released on bail on furnishing a personal bond in the sum of Rs. 5,00,000/- with two solvent sureties of the like amount to the satisfaction of the concerned trial Court.

Nitin Nikhra v. State of M.P. - [2020] 119 taxmann.com 112 (High court of Madhya Pradesh)

Investigation to be completed within three months

Assesse for offence punishable under section 132 was in custody for last 20 months - Allegation against him was that he had created about 555 fake firms and had committed fraud to tune of INR 74 crores. Rajasthan High Court rejected bail application of assessee. The Assessee against order of High Court filed an appeal before Supreme Court.

Supreme Court observed that the maximum punishment to be imposed on the petitioner, if convicted, is five years. It is also not in dispute that the petitioner has already undergone one year and eight months imprisonment. It is brought to our notice that some of the accused are released on bail.

Court held that The State shall make endeavor to complete the investigation within three months from today. SC further held that in case the investigation is not completed within three months from this day, the petitioner shall be released on bail by the Trial Court by imposing appropriate terms and conditions.

Sandeep Goyal v. Union of India [2021] 123 taxmann.com 323 (Supreme Court of India)

Authority to issue directions within four weeks

With the enactment of the GST Act with effect from July 1, 2017 the petitioner had made an attempt to transition/migrate existing credit available under the VAT scheme to the GST portal. Section 139 of the GST Act provides for migration of existing tax payers. As per the procedure set out for migration, existing dealers who held a valid PAN were provided with a provisional user ID and password, generated by the Goods and Service Tax Network (GSTN)/R2. The petitioner states that no provisional ID was received from GSTN, it proceeded to utilize an ID using random units that, admittedly, has no basis and was defective. Using this ID, the business was conducted during the period July 1, 2017 to August 21, 2017 and credit was also earned. Since it was unable to utilize the credit generated on the basis of incorrect ID, the petitioner thereafter applied for a new registration that was granted on August 22, 2017. The present writ petition is filed seeking a direction of the respondent to issue a user name and password to complete the migration process, upload returns in GSTR1 and GSTR3 and claim TRAN 1 credit under the old provisional ID earned from the months of July and August, 2017.

High Court observed that what appears to have transpired in this case is a simple human error and no serious objection is put forth permitting the petitioner to access the portal, file the requisite forms and avail the credit earned. High Court also observed that once a positive recommendation is received from the GST Authorities, GSTN will permit the petitioner to access the portal, upload the forms and avail credit.

High Court held that the appropriate authority is directed to issue the necessary positive recommendations for migration/transition of credit available in the account of the GSTN within a period of four (4) weeks from date of receipt of a copy of this order and GSTN will, in turn and within four weeks from receipt thereof, issue necessary intimation to the petitioner permitting it to access the portal and upload the forms.

Guru Shoe Components And Company v. Goods and Services Tax Council, New Delhi [2021] 123 taxmann.com 114 (High court of Madras)

Petitioner permitted either to manually or electronically upload the revised form GST Tran-1 and Tran-2.

A petition filed seeking issuance of writ of mandamus to direct the respondents to accept the Petitioner's manual filing of revised FORM GST TRAN-1 and the resultant FORM GST TRAN-2 that may be filed within a period of two weeks.

High Court held Taking into account that the office of the Commissioner, State GST Department, Thiruvananthapuram had issued further instructions as per letter dated 10-12-2019 addressed to the Special Secretary, office of the GST Council Secretariat, Delhi, etc. and in the light of the above-said decision of the Commissioner of the State GST Council, Court had passed order dated 20-12-2019 in R.P.No.932/2019 in *Popular Vehicles & Services Ltd.'s* case wherein the petitioner was permitted either to manually or electronically upload the revised form GST TRAN-II, petitioner in the case was permitted either to manually or electronically upload the revised form GST Tran-1 and Tran-2, expeditiously and without all delay, at any rate, on any day on or before 28-2-2020.

Popular Auto Dealers (P.) Ltd. v. Union of India - [2020] 115 taxmann.com 184 (High court of Kerala)

Authorities directed 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 27th December 2017. Petitioner had filed an Input Tax Credit of eligible duty (CVD) of Rs. 1,00,67,087/-. 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. Petitioner contacted the GST help desk, but did not receive concrete answers. After waiting for around 2 months for the same, Petitioner mailed written submissions to 'helpdesk@gst.gov.in' followed by online complaints to the Self Grievance Redressal forum. Subsequent to the Circular dated 3rd April, 2018 by the Central Board of Indirect Taxes and Customs, the Petitioner submitted a letter dated 27th April 2018 to the jurisdictional Assessing Officer, SGST of the Petitioner. 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. Hence, this petition.

The court observed that in several recent orders in similar circumstances, the authorities have been directed 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.

Thus, Court directed the authorities 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 13th September, 2019. The Petitioner's claims thereafter be processed in accordance with law.

Vertiv Energy (P.) Ltd. v. Union of India - [2020] 122 taxmann.com 302 (High court of Delhi)

Denying the benefit of Input credit merely on technical grounds is not justified when Petitioner is otherwise eligible for the input credit.

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. 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. Post introduction of the CGST Act, 2017 with effect from 1-7-2017, 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, the Petitioner was entitled to carry forward Input tax credit as on 30-6-2017 in the TRAN-1 form for the period from 1-7-2016 to 30-6-2017 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. 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. Upon inquiry about the form TRAN-1, the Petitioner was assured that sufficient time would be provided and further extension beyond 27th December, 2017 would be granted as there were lots of other extensions taking place in the implementation of various modules/forms of GST. Petitioner manually applied for GST TRAN-1 on 7-5-2018 as per Circular dated 3-4-2018 within the timeline as per the date extended by this Court. Authorities found the Petitioner to be eligible for credit amounting to Rs. 78,62,466/- but the credit for the same was denied as the ITGRC found that the Petitioner has not tried to save or submit or file TRAN-1 before 27-12-2017.

Court observed that the information of rejection of the Petitioner's application for manual GST TRAN-1 was not communicated to the Petitioner despite several reminders/communications from the Petitioner and it was only by way of the affidavit in reply filed to this Petition that the Petitioner has become aware of the rejection. In this case, authorities admitted that the Petitioner was eligible for input tax credit but have rejected the claim because the ITGRC has not approved it saying that the taxpayer has neither tried for saving/submitting or filing TRAN-1. There is no further explanation or clarification on this issue by the authorities.

Court held that when there is no dispute to the fact that the Petitioner is otherwise eligible for a credit of Rs. 78,62,466/- then to deny the benefit of such Input credit merely on technical grounds cannot

be justified. Merely on the technical ground, an admitted input credit is sought to be denied to the Petitioner. That would be wholly unfair and a travesty of justice. Respondents were directed 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. **Heritage Lifestyles and Developers (P.) Ltd. v. Union of India - [2021] 123 taxmann.com 230 (High court of Bombay)**

Where the portal was not open due to technical glitches, the authorities were directed to either extend the date of submitting the declaration electronically in FORM GST TRAN-1 or re-open and reinstate the facility of online or manual submission of TRAN-1.

The Writ Petition is filed in the nature of mandamus seeking a direction to open the online portal so as to enable the petitioner to again file the rectified Tran-I form or in the alternative to accept his application manually with necessary correction on or before 31-3-2020 to claim transitional credit. Petitioner filed its Central Excise Monthly returns and it availed of CENVAT Credit under the Central Excise Act, 1944 and at the time of transiting from Central Excise to GST, the CENVAT amount was Rs. 26,27,955/-. Under GST Act, the Central Excise and the Service Tax on the purchase of raw materials and on input services were allowed to be carried forward to the GST Act. Authorities had provided a window enabling the taxpayers to file the Form Tran-I till 31-3-2019. The period was extended till 31-12-2019. Since the GST Portal/Website was opened only on 15-10-2019, it did not permit the petitioner to revise the TRAN - 1 form. Therefore, petition was filed seeking to re-open the website/portal to enable him to file the revised TRAN-I form in the alternative way to accept his application with suitable amendments manually.

It was observed that in the case of W.P. (MD) No. 21320 of 2019 (*Amgamuthu Amuthavel v. CTO*) dated 14-10-2019, the Court noted that the portal was not open due to technical glitches, thus the authorities were directed to either extend the date of submitting the declaration electronically in FORM GST TRAN-1 or re-open and reinstate the facility of online or manual submission of TRAN-1.

In view of the same, the respondents were directed to extend the date of submitting the declaration electronically in Form GST TRAN-1, insofar as the petitioner was concerned. Writ petition was allowed. **Jaganathan Engineering Works v. CGST Nodal Officer for IT Grievance Redressal, Chennai - [2020] 122 taxmann.com 224 (High court of Madras)**

Appropriate authority directed to consider the application filed by the petitioner

The petitioner is engaged in conducting auctions in India for its global customers, thereby providing auctioning services. The petitioner was duly registered under the erstwhile Finance Act, 1994 for providing taxable services under business auxiliary services in terms of the provisions of the said Act. After enactment of the CGST and MGST Act, petitioner obtained a GST registration certificate. The petitioner had accumulated Cenvat credit upto 30-6-2017 for the period April-2017 to June-2017 being Rs. 47,96,627.00. Having filed the Service tax returns and crystallized the amount of eligible CENVAT credit, the petitioner attempted to file Form GST TRAN-1 in order to carry forward and transition its accumulated CENVAT credit into the GST regime. Since the statutory time limit to file Form GST TRAN-1 was fixed as 27-12-2017 vide order dated 15-11-2017, the petitioner was unable to file Form GST TRAN-1 on the GST portal. Therefore, according to the petitioner, it was unjustly precluded from filing Form GST TRAN-1 under the GST regime though it fulfilled the conditions prescribed by the proviso to section 140(1) read with rule 117(1).

High Court observed that the petitioner has attempted to file Form GST TRAN-1, although belatedly, but alongwith the applicable late fees in compliance of the erstwhile service tax laws as also the provisions of the CGST Act and MGST Act. The petitioner's application dated 4-12-2019 is pending adjudication with the appropriate authority *i.e.* respondent No. 6. Appropriate authority was directed

to consider the application dated 4-12-2019 filed by the petitioner for seeking to carry forward the accumulated Cenvat credit into the GST regime and acceptance of the petitioner's Form GST TRAN-1 in accordance with law.

Sotheby's Art Services (I) (P.) Ltd. v. Union of India - [2020] 122 taxmann.com 107 (High court of Bombay)

About the author

CA. Rajat Mohan is Fellow Member of Institute of Chartered Accountants of India (F.C.A.) and Fellow of Institute of Company Secretaries of India (F.C.S.). Furthermore, he also has qualified post qualification course of Institute of Chartered Accountants of India on 'Information Systems Audit' (D.I.S.A.).

He has authored more than half a dozen books on indirect taxes, GST being his forte with publishers like Taxutra, Wolters Kluwer and Bharat Law House. He has been authoring books on GST since 2010 every year, which has gained wide popularity in India and internationally also. He is a regular contributor of articles on GST, which are published on several online portals and in the columns of reputed tax journals and magazines. His views are well respected by media which is the reason that his name is placed regularly in national dailies and top-notch online news portals including Times of India, Economic Times, Hindustan Times, Indian Express, The Hindu, LiveMint, Hindu Business Line, Business Standard, Bloomberg, Business Today, Financial Express, Firstpost, NDTV, ETRetail, Monday News Alerts and various others.

For any areas of improvement do let us know.

M: +91-9910044223 | E: rajat@amrg.in