

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	Petitioner directed to approach the Additional Commissioner, Central Goods and Services Tax (CGST), Nodal Officer IT Grievance Redressal Mechanism for filing of the Form TRAN-1	HC
2	Authorities not guilty of contempt of court where pursuant to its directions, the authorities 'considered' and decided the case of the petitioner	HC
3	The order permitting the petitioner to file Form TRAN-1' by the extended date not amenable to review	HC
4	Time limit prescribed to upload Form GST TRAN-1 in order to avail benefit of ITC is mandatory	HC
5	Merely because there were no technical glitches in the GSTN with respect to the Petitioner's TRAN-1 which was admittedly filed in time, the claim of the Petitioner, if it was otherwise eligible in law, cannot be rejected for no apparent fault on the part of the Petitioner	HC
6	Assesse was to be directed to submit a certificate/recommendation issued by GST Council	HC
7	Respondent shall complete the exercise of verification and permit the petitioner to upload the form GST TRAN-1 within a period of two weeks	HC
8	GST Council was directed to look into the grievance	HC
9	Writ petitioner directed to submit TRAN-01	HC
10	Authorities not guilty of contempt of court where pursuant to its directions, the authorities 'considered' and decided the case of the petitioner	HC

Petitioner directed to approach the Additional Commissioner, Central Goods and Services Tax (CGST), Nodal Officer IT Grievance Redressal Mechanism for filing of the Form TRAN-1.

The petitioner claims that it is liable for Input Tax Credit (ITC) on the purchase of goods from the manufacturer. At the time of enactment of GST Act, 2017, the petitioner was entitled for taking the Input Tax Credit (ITC). It was submitted that an application in Form GST TRAN-1 had to be submitted by 27-12-2017 in respect of credit of tax duty paid for the period upto 30-6-2017. The petitioner tried to access the GST portal to file its Form TRAN-1, but the same was not accessible due to technical glitch which continued throughout the day. The petitioner approached the Nodal Officer, IT Redressal Committee but petitioner's grievance was not redressed though the petitioner is regularly trying to approach the Additional Commissioner, Central Goods and Services Tax (CGST), Nodal Officer IT Grievance Redressal Mechanism for filing of the Form TRAN-1.

Court noticed that the Additional Commissioner, Central Goods and Services Tax (CGST), Nodal Officer IT Grievance Redressal Mechanism is the appropriate authority to redress the grievances of the petitioner. Without entering into the merits of the claim of the petitioner, the petitioner was directed

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.*

to approach the Additional Commissioner, Central Goods and Services Tax (CGST), Nodal Officer IT Grievance Redressal Mechanism by moving a fresh application along with a copy of this order within a period of three weeks from today. Additional Commissioner, Central Goods and Services Tax (CGST), Nodal Officer IT Grievance Redressal Mechanism was directed to look into all the grievances of the petitioner and take necessary steps to redress the same within a period of four weeks thereafter.

Committee of Management, Sadhan Sahkari Samiti Ltd. v. State of Uttar Pradesh - [2020] 122 taxmann.com 222 (High court of Allahabad)

Authorities not guilty of contempt of court where pursuant to its directions, the authorities 'considered' and decided the case of the petitioner.

Petitioner filed writ petition on the facts that the petitioner-company had CENVAT Credit balance of Central Taxes amounting to Rs. 7,51,33,423/-. Petitioner had filed another TRAN-1 form for CENVAT Credit of Rs. 14,71,031/-, which was made admissible and credited to its Electronic Credit Ledger account on 26-10-2017. It could not amend TRAN-1 form as per the provisions of GST Act. Therefore, direction was sought to be issued to the authorities to consider the case of the petitioner-company for amendment of TRAN-1 form. Writ petition was disposed of directing the authorities to consider the case of the petitioner-company for amendment of TRAN-1 form and pass appropriate orders. Alleging that the case of the petitioner for amendment of TRAN-1 form was not considered and no orders were passed in the case of petitioner, this contempt petition was instituted.

It was held that the direction issued to the authorities in the writ petition was to 'consider' the case of the petitioner and to decide it in light of the judgment in the case of *Adfert Technologies (P.) Ltd's*. Pursuant to the directions, the authorities 'considered' and decided the case of the petitioner. Therefore, it cannot be said the authorities have flouted the judgment passed by this Court. Consequently, it was held that no contempt was made out. Hence, the contempt petition was dismissed.

Macleods Pharmaceutical Ltd. v. Prakash kumar -[2020] 122 taxmann.com 289 (High court of Himachal Pradesh)

The order permitting the petitioner to file Form TRAN-1' by the extended date not amenable to review.

The applicant has filed a review application seeking review of the final judgment and order dated 20-12-2019 passed by this Court, whereby the writ petition bearing CWP No. 36863 of 2019 was allowed in terms of the CWP No. 30949 of 2018, decided on 4-11-2019, titled "*Adfert Technologies Pvt. Ltd. v. Union of India* and others" and the authorities were directed to permit the petitioner to file Form TRAN-1' by the extended date.

The court observed that the earlier Review Application moved by the UOI stands dismissed by this Court, *vide* judgment dated 29-11-2019, titled "*Ajay Hardware Industries (P.) Ltd. v. Union of India*. It was held that on the introduction of GST regime, the Government granted an opportunity to registered persons to carry forward unutilized credit of duties/taxes paid under different erstwhile taxing statutes. GST is an electronic-based tax regime and most of people of India are not well conversant with an electronic mechanism. Most of the people are not able to load simple forms electronically whereas there were a number of steps and columns in TRAN-1 forms thus possibility of mistakes cannot be ruled out. Various reasons assigned by Petitioners seem to be plausible. Unutilized credit arising on account of duty/tax paid under erstwhile Acts is the vested right that cannot be taken away on procedural or technical grounds. The Petitioners who were registered under Central Excise Act or VAT Act must be filing their returns and it is one of the requirements of section 140 of CGST Act, 2017 to carry forward unutilized credit. The authorities were having a complete record of already registered persons and at present, they are free to verify fact and figures of any Petitioner thus in spite

of being aware of complete facts and figures, the authorities cannot deprive Petitioners from their valuable right of credit.

In view of above, Review Applications were dismissed in terms of the said RA-CW No. 479 of 2019 in CWP No. 4648 of 2019, decided on 29-11-2019.

Mahesh Steel Corporation, Faridabad v. Union of India - [2020] 118 taxmann.com 517 (High court of Punjab & Haryana)

Time limit prescribed to upload Form GST TRAN-1 in order to avail benefit of ITC is mandatory.

The Petitioner is a proprietary concern involved in the retail trade of mobile phones, electrical, electronic, and other items. Earlier, the Petitioner was registered as a dealer under the Tamil Nadu Value Added Tax Act, 2006 and, upon the coming into force of the CGST Act, the Integrated Goods and Services Tax Act, 2017 and the State Goods and Services Act, 2017 on 1-7-2017, the Petitioner obtained registrations under the GST laws. When the CGST and SGST Acts were introduced, as a transitional measure, the carry forward of credit for taxes paid on inputs under previously existing indirect tax laws, which may be referred to as transitional ITC (Transitional ITC), was enabled by making provision in respect thereof. In terms thereof, according to the Petitioner, he is entitled to avail Transitional ITC of Rs. 4,62,496/- under the head of CGST and Rs. 7,512/- under the head of SGST under the respective GST laws. Petitioner has filed petition for issuance of direction to authorities to permit the Petitioner to file Form GST TRANS - 1 either electronically or manually to claim the transitional input tax credit of Rs. 4,70,008/-. The issue was whether petitioner is entitled to avail Transitional ITC?

High Court observed that Section 140 stipulates that a registered person making a claim for input tax credit should furnish a return, within such time, and in such manner as may be prescribed. The rule making power is contained in section 164, which is couched in wide terms, and enables the Government to frame rules to give effect to the provisions of the Act and, in particular, to make rules for matters that are required to be prescribed by the CGST Act. Interestingly, the power to frame rules with retrospective effect is also conferred subject to the limitation that it should not pre-date the date of entry into force of the CGST Act. Pursuant thereto, rule 117 was framed whereby a time limit was fixed for submitting the online Form GST TRAN -1. By the Finance Act of 2020, the words "within such time" were introduced in Section 140, with retrospective effect from 1-7-2020, thereby conferring expressly the power to prescribe time limits in section 140 even without relying entirely on the generic section 164. Thus, rule 117 of the CGST Rules is *intra vires* section 140 of the CGST Act. It was observed that ITC cannot be availed of without complying with the conditions prescribed in relation thereto. Both ITC and Transitional ITC cannot be availed of except within the stipulated time limit. Such time limits may, however, be extended through statutory intervention. The object and purpose of Section 140 clearly warrants the necessity to be finite. ITC has been held to be a concession and not a vested right. In effect, it is a time limit relating to the availing of a concession or benefit. The time limit is mandatory and not directory. It was observed that Rule 117 specifies that the return in Form GST TRAN - 1 is required to be filed electronically on the common portal. This requirement is not satisfied by handing over the form in person to the Sales Tax Collection Inspector, Tiruvannamalai. Consequently, the Petitioner has completely failed to make out a case to direct the Respondents to permit the Petitioner to file Form GST TRAN -1 and claim the Transitional ITC of Rs. 4,70,008/-. Writ petition was dismissed.

P.R. Mani Electronics v. Union of India, New Delhi - [2020] 117 taxmann.com 868 (High court of Madras)

Merely because there were no technical glitches in the GSTN with respect to the Petitioner's TRAN-1 which was admittedly filed in time, the claim of the Petitioner, if it was otherwise eligible in law, cannot be rejected for no apparent fault on the part of the Petitioner.

The Petitioner is a Non-Banking Financial Company engaged in financing automobiles in the form of loans and financial leases to various customers in addition to acting as a corporate insurance agent for some insurance companies. Petitioner entered into leasing contracts with various customers in the erstwhile indirect tax regime, which have been continuing post introduction of GST Act, 2017. On such contracts, the Petitioner had paid Service tax on 10% of the interest portion of such contract and had upfront deposited 100% Value Added Tax (VAT) in the first month of the contract itself, on the entire value of rentals as per specific provisions. It is entitled to carry forward the VAT paid in terms of section 142(11)(c). The transitional VAT credit is also required to be reflected in FORM GST TRAN-1 as set out under rule 118 read with rule 117. It had submitted declaration in Form GST TRAN-I for the unit in Maharashtra for transitioning credit of Rs. 17,07,673/- and had also received acknowledgment of the same and also received a confirmation email. However, the entire credit of VAT/State tax of Rs. 17,07,673/- as reported in column 11 of the Form GST TRAN 1 was not reflected on the electronic credit ledger as the credit could not be transitioned despite submitting the form on time on the GSTN - common electronic portal in time. Petitioner sought a Writ of Mandamus directing the Respondents to take such actions as may be necessary for transitioning the credit as filed by the Petitioner in Form GST TRAN-1 to avail the credit either electronically or manually. The issue was whether denial of transitioning the credit after the submission of declaration in Form GST TRAN-1 was justified?

High Court observed that the request of the Petitioner for transitioning of credit has not been approved by the ITGRC merely on the basis that there were no technical glitches on the GSTN side. There is no further explanation or clarification or evidence on the issue by the authorities. It was observed that merely because there were no technical glitches in the GSTN with respect to the Petitioner's TRAN-1 which was admittedly filed in time, the claim of the Petitioner, if it was otherwise eligible in law, cannot be rejected for no apparent fault on the part of the Petitioner.

Court directed the authorities to consider the case of the Petitioner and take such actions as may be necessary for transitioning the credit of such amount into the Petitioner's credit ledger/electronic credit ledger within four weeks from the date of the order.

BMW India Financial Services Pvt. Ltd. v. Union of India - [2021] 123 taxmann.com 318 (High court of Bombay)

Assesse was to be directed to submit a certificate/recommendation issued by GST Council

The writ petitions have been filed by the petitioners aggrieved by non-filing of Form GST Tran-1 at common portal allegedly because of various system error/technical glitches at the portal throughout the period during which the Form was available, which resulted in denial of transactional credit of central excise paid on goods amounting to INR 23,27,063/- and INR 085,41,755/- as on the appointed date i.e. July 1, 2017 in terms of Section 140 of the Central Goods and Service Tax Act, 2017.

Court observed from the *Jodhpur Truck (P.) Ltd.* that the Court permitted the petitioners to submit online Form GST Tran-1 subject to furnishing a proof that they had tried to upload Form GST Tran-1 prior to December 27, 2017 and such attempt failed due to technical glitches on the common portal. HC further observed from the case of *Jodhpur Truck Pvt. Ltd.*, that the petitioners were required to submit a certificate/recommendation issued by GST Council in this regard, the form was ordered to be accepted and the GST Council was required to issue their requisite certificate within a period of 15 days if the petitioners' assertion was found correct and in case the petitioners were not entitled for the requisite, the Council was required to pass an order giving reasons. Court also observed from the perusal of the representations made by the petitioners that except for claiming the credit, the petitioners did not indicate any material to show that the petitioners had failed to upload their Form

GST Tran-1 on account of technical glitches on the common portal and such an attempt was made during the currency of the transitional period as required by the judgment in the case of *Jodhpur Truck (P.) Ltd.* (supra).

Shree Motors v. Union of India [2020] 115 taxmann.com 344 (High court of Rajasthan)

Respondent shall complete the exercise of verification and permit the petitioner to upload the form GST TRAN-1 within a period of two seeks

Section 140 of the Act, 2017 provides that the petitioner is entitled to carry forward credit of CENVAT as available/admissible on the day immediately preceding the appointed day i.e. 1st July 2017 read with rule 117 of the Central Goods and Services Tax Rules, 2017. According to the petitioner, the petitioner tried to upload form GST TRAN-1 to claim credit amounting to INR 9,06,154/- and INR 38,83,511/- for its Vatva Unit towards excise duty paid and INR 13,53,244/- towards service tax credit. However, due to technical glitches in the GST portal, the petitioner could not file/upload the form GST TRAN-1.

The petitioner approached the GST Department as well as jurisdictional Nodal Officer appointed by the GST Department for redressal of its grievances. In spite of the efforts made by the petitioner, the case of the petitioner was not considered by the competent authority so as to enable the petitioner to claim credit of CENVAT in view of transitional provisions of section 140 of the Act, 2017 as on 1st July 2017. Petitioner contended that as per section 140 of the Act, 2017 provides that the petitioner is entitled to carry forward credit of CENVAT as available/admissible on the day immediately preceding the appointed day i.e. 1st July 2017 read with rule 117 of the Central Goods and Services Tax Rules, 2017.

Court observed that from the case of *Siddharth Enterprises v. Nodal Officer* wherein it is held that the petitioner is entitled to transitional credit of CENVAT as well as service tax as it is the legitimate right of the petitioner to carry forward credit of CENVAT as well as service tax under the Act, 2017.

Court held that the petitioner is entitled to claim credit of CENVAT as well as service tax as on 30th June 2017 as per the provisions under section 140(1) of the Act, 2017 read with rule 117 of the Rules, 2017. HC further held that Respondent who is the jurisdictional officer, is directed to verify the claim of credit of CENVAT and service tax of the petitioner so as to enable the petitioner to carry forward by filing/uploading form GST TRAN-1 on GST portal. In view of the above, HC concluded that respondent shall complete the exercise of verification and permit the petitioner to upload the form GST TRAN-1 within a period of two seeks from the date of receipt of the writ of this order so that the petitioner can upload the form GST TRAN-1 on or before 31st March, 2020.

Rohan Dyes And Intermediates Ltd. v. Union of India [2020] 115 taxmann.com 387 (High court of Gujarat)

GST Council was directed to look into the grievance

Assessee submitted FORM GST TRAN-1 in a proper complete and correct manner but GST portal did not reflect value of stock returned and, therefore, assessee was unable to submit Form GST TRAN-2 in relation to Part 7A. Assessee filed writ petition seeking relief in this regard

Court observed that it was not the case that the petitioner is not willing to file any return or seeking time for filing return on various grounds. The case of the petitioner is that though the petitioner was ready to file TRAN-2 electronically, the same could not be done as the portal was not working, because of which he had approached the authorities for allowing him to submit the form manually and directed the authorities to allow the petitioner to file the form, either electronically or manually, as the case may be. HC also observed that the petitioner had made all the attempts to file electronically but because of computer glitches, the same could not be filed and as also been mentioned in the affidavit-in-opposition that the GST Council has been apprised of the same and as also agreed by the petitioner,

the GST Council respondent therein will examine the said grievance of the petitioner and allow him to file the return either electronically or manually, as they may decide so that the petitioner is not deprived of the ITC, which is due to him.

Therefore, Court held that GST Council was to be directed to look into the grievance of the assessee so that it may file FORM GST TRAN-2 either electronically or manually, as case may be, which exercise shall be undertaken within a period of three weeks.

Geep Industries (India) P. Ltd. V Union of India, New Delhi [2020] 122 taxmann.com 219 (High court of Gauhati)

Writ petitioner directed to submit TRAN-01

The Writ Petitioner is a partnership concern doing business in pulses and turmeric registered GST Act, 2017. The request of the Writ Petitioner is, to direct the Respondents to accept his Form GST TRAN-1 enabling him to claim transitional credit of the eligible taxes in respect of the excess input tax credit of INR 1, 92,095/- on the appointed day i.e., 01st July, 2017 in terms of section 140(1) and (3) of the APSGST/CGST Act, 2017 read with Rule 117 of the Central Goods and Services Tax Rules, 2017. Petitioner pleaded that, the Writ Petitioner could not upload the Form GST TRAN-1 due to technical glitches in terms of poor internet connectivity and other technical difficulties on the GST common portal. It is further pleaded that, the Writ Petitioner also met the Respondent being the Nodal Officer from time-to-time and also addressed letters to the concerned for allowing him to file online Form GST TRAN-1 in terms of the decision of the GST Tax Council and Circular.

High Court observed that Rule 117 of the SGST Rules, 2017 was introduced to provide for the mode and manner in which such credit is to be carried forward. The relevant portion of the Rule reads as under:

"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 to which he is entitled under the provisions of the said section:

It observed that Rule 117 of the SGST Rules prescribed a period of 90 days from the appointed day to file Form GST TRAN-1 mentioning the amount of transitional input tax credit claimed by the registered person. The Form GST TRAN-1 is to be filed electronically on the common portal within the time fixed in the Rule initially or extended by notifications. also observed that the Writ Petitioner has been trying to upload the said form, but was unsuccessful in doing so for various reasons, like poor internet connection and the technical difficulties of GSTN common portal. The contents of the affidavit also makes it clear that the Writ Petitioner met the Nodal Officer from time-to-time explaining his grievances in uploading the Form TRAN-1 apart from addressing letters to the concerned. Therefore, the argument regarding Writ Petitioner has not come forward with a genuine reason seeking submission of application manually may not be correct. HC also observed from the judgment in *Uninav Developers (P.) Ltd. v. Union of India, Bhargava Motors v. Union of India, Kusum Enterprises (P.) Ltd. v. Union of India and Sanko Gosei Technology India (P.) Ltd. v. Union of India* the Court disposed of the writ petition directing the respondents to either open the portal so as to enable the petitioner to again file the Form GST TRAN-1 electronically or in the alternative, accept the Form GST TRAN-1 presented manually by fixing a cut of date and process the claim in accordance with law.

Court directed the respondents concerned to permit the Writ Petitioner to submit GST TRAN-1 Form electronically or, in the alternative, manually, by fixing a cut off date, within a period of 30 days from the date of receipt of judgment, in which event, the same may be dealt with, in accordance with law. No order as to costs.

Sri G.K. Exim v. Deputy Commissioner of Commercial Tax, Visakhapatnam [2021] 124 taxmann.com 100 (High court of Andhra Pradesh)

Authorities not guilty of contempt of court where pursuant to its directions, the authorities 'considered' and decided the case of the petitioner.

Petitioner filed writ petition on the facts that the petitioner-company had CENVAT Credit balance of Central Taxes amounting to Rs. 7,51,33,423/-. Petitioner had filed another TRAN-1 form for CENVAT Credit of Rs. 14,71,031/-, which was made admissible and credited to its Electronic Credit Ledger account on 26-10-2017. It could not amend TRAN-1 form as per the provisions of GST Act. Therefore, direction was sought to be issued to the authorities to consider the case of the petitioner-company for amendment of TRAN-1 form. Writ petition was disposed of directing the authorities to consider the case of the petitioner-company for amendment of TRAN-1 form and pass appropriate orders. Alleging that the case of the petitioner for amendment of TRAN-1 form was not considered and no orders were passed in the case of petitioner, this contempt petition was instituted.

It was held that the direction issued to the authorities in the writ petition was to 'consider' the case of the petitioner and to decide it in light of the judgment in the case of *Adfert Technologies (P.) Ltd's*. Pursuant to the directions, the authorities 'considered' and decided the case of the petitioner. Therefore, it cannot be said the authorities have flouted the judgment passed by this Court. Consequently, it was held that no contempt was made out. Hence, the contempt petition was dismissed.

Macleods Pharmaceutical Ltd. v. Prakash kumar -[2020] 122 taxmann.com 289 (High court of Himachal Pradesh)

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 Taxsutra, 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