

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CIVIL APPLICATION NO. 13091 of 2020**

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EZZY ELECTRICALS  
Versus  
STATE OF GUJARAT

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Appearance:

MR UCHIT N SHETH(7336) for the Petitioner(s) No. 1  
MR UTKARSH R SHARMA(6157) for the Respondent(s) No. 5  
NOTICE SERVED for the Respondent(s) No. 1,2,3,4

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**CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA**  
and  
**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

**Date : 02/02/2022**

**ORAL ORDER**

**(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1 We have heard Mr. Uchit Sheth, the learned counsel appearing for the writ applicant and Mr. Utkarsh Sharma, the learned A.G.P. appearing for the respondents.

2 The controversy in the present litigation appears to be in a narrow compass. The writ applicant is a proprietary concern. The case of the writ applicant is that he is a small size taxpayer and was eligible for composition scheme under Section 10 of the G.S.T. Act. The writ applicant was registered under the said scheme till 31<sup>st</sup> March 2018. The writ applicant decided to opt out of the composition scheme w.e.f. 1<sup>st</sup> April 2018. In such circumstances, the writ applicant filed the necessary Form GST CMP – 04 on 31<sup>st</sup> March 2018.

3 Once a person ceases to pay tax under the composition scheme, as

envisaged under Section 10 of the G.S.T. Act, he becomes entitled to claim an Input Tax Credit of the goods held in stock as on the date of transition by virtue of Section 18(1)(c) of the G.S.T. Act.

4 The conditions for claim of such Input Tax Credit are stipulated in Rule 40 of the Central / Gujarat Goods and Services Tax Rules, 2017.

5 It is not in dispute that for the purpose of claiming an Input Tax Credit under Section 18(1)(c) of the G.S.T. Act, a Form GST ITC – 01 should have been filed within 30 days from the date of becoming eligible to avail the Input Tax Credit or within such time period, as may be extended by the Commissioner.

6 *Prima facie*, it appears that the writ applicant was not in a position to operate the GST Portal on account of some technical issues. The writ applicant did tried to upload the Form ITC – 01 on the basis of the Notification dated 17<sup>th</sup> September 2018 i.e. well within the extended time limit. However, an error report was generated on the portal and the writ applicant was unable to file such Form.

7 It is the case of the writ applicant that since 24<sup>th</sup> September 2018, for not less than 15 times, he requested the concerned authority to look into the matter and permit him to upload the Form ITC – 01. however, till this date, the concerned authority has not said anything in that regard.

8 Mr. Utkarsh Sharma, the learned A.G.P. invited our attention to the affidavit-in-reply filed on behalf of the respondent No.5 – GST. In the reply, the stance as reflected therein is as under:

*“5.1 I say and submit that the primary issue involved in the petition is that the petitioner opted out of the composition scheme w.e.f. 1.4.2018. The petitioner tried to upload form ITC-01 on 17.09.2018. Notification No.42/2018-Central Tax dated 04.09.2018 extended the time limit for filing ITC-01 for a period of 30 days from the date of publication of notification for taxpayers who has filed application in FORM GST CMP-04 between 02.03.2018 and 31.03.2018. As claimed, the petitioner was unable to file ITC-01 form due to technical glitches of the GST portal. The screen shot was submitted by the taxpayer for Technical glitches, which is already at Annexure-C (pg. no.19).*

*6. I say and submit that as per technical analysis, the ITC-01 logs of the petitioner (GSTN 24AAOPL0729PIZ9) along with the screen shot of annexed as Annexure-C of page 19 of the writ petitioner were examined in GSTN. No technical glitches of the GST portal were observed in petitioner’s case. From the screen shot annexed by the petitioner, it is observed that the petitioner used the ‘wrong offline tool’ for filing of ITC-01.*

*GSTN : 24AAOPL0729PIZ9 with Legal Name : KURBANHUSAN ABDRAALI LAXMIDHAR is an active taxpayer on the GST Portal from 1<sup>st</sup> July 2017. The petitioner opted out of composition on 31<sup>st</sup> March 2018.*

*7. As per the screenshot provided by the petitioner at Annexure-C of the writ petition, the petitioner was using the offline Tool with version Number Release 2.2.3 which was last updated on 10/04/2018. On the same screenshot “GSTR Returns” has also been stated on top which shows that the offline utility was for filing returns and not ITC-01. Further, the current version of the ITC-01 offline tool available on the GST portal is ITC\_Offline\_v1.0 released on 12<sup>th</sup> January, 2018. The numbering of versions of offline tool is always incremental on the GST portal. The current version of the ITC 01 tool is v1.0, therefore, the previous version cannot be greater than v1.0. It is evident from the screen shot shared by the petitioner at Annexure-C that the offline tool which was being used by the petitioner was 2.2.3 which also shows that the petitioner was using wrong utility for filing ITC-01.*

*8 It is apparent from the screen shot provided as Annexure-C of the writ petitioner that the petitioner was using, the Returns Offline Tool Version 2.2.3. No technical glitches of the GST portal were found with the summary reported by the petitioner. In view of the above, no technical glitches of the GST portal were found in this matter. The copy of the relevant screen shots of the software are annexed herewith and marked as Annexure-I colly.”*

9 We have been able to understand the stance of the respondent No.5 as above. However, the question is whether all the doors are closed for the writ applicant for all times to come? Is there any scope still for the authority to permit the writ applicant to upload the Form ITC – 01 for the purpose of claiming the refund towards the Input Tax Credit. The amount which could have been refunded at the relevant point of time is approximately Rs.5 Lakh.

10 In the peculiar facts and circumstances of the case, we expect the respondents, more particularly, the respondent No.5 to find out some via media by which the writ applicant is able to upload the Form once again and seek refund. *Prima facie*, we are of the view that it will be too much at this point of time to tell the writ applicant that as he was not in a position to operate the portal properly, he should now forget to seek any refund. We expect the respondents to try to find out some way having regard to the peculiar facts and circumstances of the case. We request Mr. Sharma, the learned A.G.P. to speak to the respondents in this regard and revert to us by the next date of hearing.

11 Post the matter on 16<sup>th</sup> February 2022 on top of the Board.

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**(J. B. PARDIWALA, J)**

**(NISHA M. THAKORE, J)**

CHANDRESH