

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13607 of 2022

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AARTI INDUSTRIES LIMITED

Versus

UNION OF INDIA

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Appearance:

MR. JAINISH P SHAH(7033) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,2,3

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CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 08/08/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

1. Heard learned advocate Mr. Jainish Shah for the petitioner.

2. In this petition, the following prayers are made:

(i) to direct the respondents to transmit Rs. 43,73,628/-

(Rupees Forty Three Lakhs Seventy Three Thousand Six

Hundred and Twenty Eight only) towards unutilised

accumulated CENVAT credit balance of the Education Cess

and Secondary & Higher Education Cess by allowing the

petitioners to manually file Form GST TRAN-1;

(ii) to direct the respondents to credit Rs. 43,73,628/- (Rupees Forty Three Lakhs Seventy Three Thousand Six Hundred and Twenty Eight only) towards unutilised accumulated CENVAT credit balance of the Education Cess and Secondary & Higher Education Cess, directly in the Electronic Credit Ledger of the petitioner;

3. The facts are that between 6.7.2017 to 31.7.2017, the petitioner filed Form ER-1 Returns for the month of June, 2017 in respect of its nine manufacturing units. The Goods and Services Tax regime came into effect from 1.7.2017. The GST Tran-1 filed by the petitioner in respect of the nine manufacturing units and credit was received in the Electronic Credit Ledger. The petitioner, however, could not have credit of Educational Cess and Secondary and Higher Secondary Education Cess.

3.1 It is the case of the petitioner that Rs. 47,73,628/- towards unutilised accumulated CENVATE credit balance towards the aforesaid tax and cess has not been returned to the petitioner by crediting the same in the Electronic Credit Ledger of the petitioner. Therefore, the relief prayed for is to direct the respondents to transmit the said amount.

4. The petitioner wants to file 'Form GST Tran-I' to enable the petitioner to claim the carried forward eligible duties of CENVAT/ Input Tax Credit on account of Service Tax, Central Excise and Gujarat Value Added Tax on the appointed day i.e 30.6.2017 in terms of Section 140 of the Goods and Services Tax Act, 2017 read with Rule 117 of the Central Goods and Services Tax Rules, 2017. It is the case and contention that the due date contemplated under the aforesaid Rule to claim the transitional credit being procedural in nature is therefore directory and not mandatory. The petitioner wants to be permitted to file GST Tran -I electronically or manually to claim the CENVAT/ Input Credit.

5. Learned advocate appearing for the petitioner fairly stated that the issue involved and required to be addressed in this petition has been answered by the Apex Court in case of **Union of India and anr vs. Filco Trade Centre Pvt. Ltd and anr** in Special Leave to Appeal No. 32709--327010 of 2018 and another allied matters decided on 22.07.2020.

6. The Supreme Court issued the following directions disposing of the Special Leave to Appeal:

“1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.

2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).

3. GSTN has to ensure that there are no technical glitch during the said time.

4. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties.

5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.

6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims.”

7. It goes without saying that the aforesaid decision of the Supreme Court shall govern the right of the parties. The petition is accordingly disposed of in the above terms.

(N.V.ANJARIA, J)

JYOTI V. JANI

(BHARGAV D. KARIA, J)

