

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 109 of 2020**

Unichem Laboratories LimitedPetitioner
V/s.
Union of India and 4 OrsRespondents

**WITH
WRIT PETITION NO. 1479 OF 2019**

Castrol India Limited and AnrPetitioners
V/s.
Union of India and 4 OrsRespondents

**WITH
WRIT PETITION NO. 2786 OF 2021**

Nivea India Private LimitedPetitioner
V/s.
Union of India through the Joint Secretary
(Revenue) and OrsRespondents

**WITH
WRIT PETITION NO. 1646 OF 2022**

Pfizer LimitedPetitioner
V/s.
Union of India through the Joint Secretary
(Revenue) and OrsRespondents

**WITH
WRIT PETITION NO. 262 OF 2019**

Siemens Healthcare Pvt LtdPetitioner
V/s.
Union of India and 5 OrsRespondents

Mr. Jitendra Motwani a/w Mr. Nishant Shah, Ms. Virangana Wadhawan and Mr Neeraj Hande i/b Economic Laws Practice for Petitioner in WP/109/2020 and WP/2786/2021
Mr Rohan P Shah a/w Mr Udayan Choksi and Mr Sri Sabari Rajan i/b Vox Law for Petitioners in WP/1479/2019.
Mr Vikram Nankani, Senior Advocate a/w Mr Jitendra Motwani and Mr Nishant Shah i/b Economic Laws Practice for Petitioner in WP/262/2019.
Mr Prasad Paranjape a/w Mr Sanjeev Nair i/b Lumiere Law Partners for Petitioner in WP/1646/2022.
Mr Pradeep S. Jetly, Senior Advocate a/w Mr. Dhananjay B. Deshmukh for Respondent Nos. 1, 4 & 5 in WP/109/2020.
Ms. P.S. Cardozo a/w Ms. Ruju R. Thakker for Respondent Nos. 2 to 5 in WP/1479/2019.
Mr. Padmakar Patkar a/w Mr. Karan Adik for Respondent Nos. 2 to 4 in WP/2786/2021.
Mr. Jitendra B. Mishra a/w Ms. Maya Majumdar for Respondent Nos. 1, 2, 3 and 7 in WP/262/2019.
Mr Jitendra B. Mishra and Mr. Dhananjay B Deshmukh for Respondent Nos. 1, 2,4 and 7 in WP/1646/2022.
Ms. Jyoti Chavan, AGP for Respondent-State in WP/2786/2021 and WP/1646/2022
Mr. Himanshu Takke, AGP for Respondents- State in WP/262/2019.

**CORAM : K.R.SHRIRAM &
GAURI GODSE, JJ.**

DATE : 23rd AUGUST, 2022.

P.C.

1. The present batch of Petitions have been filed in relation to the procedural difficulties / objections raised with regard to distribution and/or utilisation and/or eligibility of Input Service Distributor (ISD) credit of Service

Tax/excise duty under Section 140 of the CGST Act 2017.

2. The common objection of Respondent in this batch of Petitions is that ISD Credit cannot be transitioned directly into the Electronic Credit Ledger (ECL) maintained under the GST Regime. In view of the provisions of CGST Act, the ISD credit ought to have been distributed by the said ISD to its different units/offices before 1.07.2017 and thereafter the transferee unit/offices ought to have filed TRAN-1 to transition the said credit distributed to it by ISD, into their respective ECL.
3. It is Petitioners' case that Petitioners attempted distribution of credit transitioned/reporting of the distributed credit by the ISD registration to their units/offices. However, they were not able to distribute/recognise and report the distribution, as there were procedural and functional difficulties in relation to the GST forms and portal.
4. The Hon'ble Apex Court, to aid the assesseees to overcome the procedural/technical hurdles, by an order dated 22nd July, 2022 in Petition(s) for Special Leave to Appeal(C) No(s).32709-32710 of 2018 and other matters in ***Union of India & Another Vs Filco Trade Centre Pvt. Ltd. & Another***¹ directed the GST Network to open the common portal to

1 2022 (7) TMI 1232

file/rectify TRAN-1 and TRAN-2 for a period of two months, i.e., with effect from 1st September, 2022 to 31st October, 2022 to enable the different private parties to avail Transitional Credit. The order reads as under :-

“O R D E R

Permission to file Special Leave Petition(s) is allowed.

Delay condoned.

Having heard learned Additional Solicitor General, learned counsel appearing for different States and learned counsel appearing for different private parties and having perused the record, we are of the view that it is just and proper to issue the following directions in these cases :

- 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 concerned.*

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.*

The Special Leave Petitions are disposed of accordingly.

Pending applications, if any, also stand disposed of.”

5. We also intend to adopt the same approach. In the circumstances, directions given below would meet the ends of justice:

- (a) All Petitioners, through their respective units/offices registered under CGST Act and/or State Acts, as the case may be, can avail this window and file GST TRAN-1/revised GST TRAN-1 at the units/offices between 01.09.2022 to 31.10.2022 in terms of the Hon’ble Supreme Court’s order in *Filco Trade (Supra)*
- (b) The GST TRAN-1/ revised GST TRAN-1 filed by the units/offices will be basis the manual ISD invoices issued / to be issued by ISD of Petitioner subject to aggregate credit not exceeding the ISD credit available with the ISD Petitioner

- (c) The Central Board of Indirect Taxes and Customs (CBIC), keeping in mind the problems faced by various parties, to issue a clarification, after due deliberation, in relation to the distribution / reporting of ISD credit preferably within 21 days from the date this is Order is uploaded, keeping in mind the approach adopted by the Hon'ble Supreme Court of India in *Filco Trade (Supra)*. Petitioners, may, if so advised, approach the CBIC in this regard.
- (d) 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 concerned.

6. With the consent of the Counsels, Petitions are accordingly disposed.

[GAURI GODSE, J.]

[K.R.SHRIRAM, J.]