

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P (T) No. 2524 of 2020

M/s Shri Enterprises, a proprietary concern, Dhanbad--- Petitioner
Versus

1. The Goods and Services Tax Network through its Chairman, New Delhi
2. Union of India through the Secretary and Commissioner (GST), Ministry of Finance, Department of Revenue, New Delhi
3. The State of Jharkhand through the Commissioner, Commercial Taxes Department, Ranchi
4. Joint Commissioner of State Tax, Jharkhand, Ranchi
5. Deputy Commissioner of State Tax, Commercial Taxes Department, Katras Circle, Katras, Dhanbad
6. Assistant Commissioner of State Tax, Commercial Taxes Department, Katras Circle, Katras, Dhanbad --- --- Respondents

CORAM: Hon'ble Mr. Justice Apareesh Kumar Singh
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner: M/s Biren Poddar, Sr. Advocate, Deepak Sinha,
Piyush Poddar, Rakhi Sharma, Advocates

For the Resp.-GSTN: M/s P.A.S Pati, Ranjana Mukherjee, Advocates

For the Resp.-State: Mr. Deepak Kr. Dubey, A.C to A.A.G-II

07 / 26.07.2022 Writ petition was preferred for the following relief (s).

- (a) For a declaration that Rule 117 of the Jharkhand Goods and Services Tax Rules, 2017 to the extent it prescribes a period of limitation for claiming of Input Tax Credit (ITC) in Form GST TRAN-1 is ultra vires to Section 140 of the Jharkhand Goods and Services Tax Act, 2017 as the said Section does not authorise the rule-making authority to prescribe a time limit within which such FORM GST TRAN-1 is to be filed in order to claim such input tax credit (ITC)
- (b) For a further declaration that the due date contemplated under Rule 117 of the Jharkhand Goods and Services Tax Rules, 2017 to claim the transitional credit, as being procedural in nature was thus merely directory and not a mandatory provision.
- (c) For a further declaration that in absence of any time limit provided in Section 140 of JGST Act, 2017 for claiming Input Tax Credit (ITC), such claim in FORM GST TRAN-1 can be filed by the registered dealer within three years from the date of coming into force of JGST Act, 2017 i.e. 30.06.2020, as the said Act came into force on 01.07.2017 as provided under Article 137 of the Limitation Act, 1963.
- (d) For quashing the Order dated 01.07.2020 (Annexure-8) passed by the Deputy Commissioner of State Tax, Katras Circle, Katras (Respondent No. 5) by which he has been pleased to reject the application dated 12.06.2020 with FORM GST TRAN-1 (contained in Annexure-7) manually filed by the petitioner before the Deputy Commissioner of State Tax, Katras Circle, Katras (Respondent No.5) on the ground that the petitioner had not filed the said FORM GST TRAN-1 online on GST portal and there was no information received from the GST Council to accept the said FORM TRAN-1 offline, although the petitioner had filed an application dated 04.02.2019 (Annexure-5) before the Deputy Commissioner of State Tax, Katras Circle, Katras (Respondent No. 5) requesting therein to open the GST/common portal for

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allowing the petitioner to file FORM TRAN-1 which could not be filed due to technical difficulties on common portal, which application was forwarded by him to the Joint Commissioner of State Tax, Jharkhand, Ranchi for necessary action vide Memo No. 40 dated 05.02.2019 (Annexure-6) but neither any action was taken on the said application nor the GST/common portal was opened for allowing the petitioner to file FORM TRAN-1.

(e) For a direction upon the concerned respondent to accept the said FORM GST TRAN-1 (contained in Annexure-7), manually filed by the petitioner on 12.06.2020 before the Deputy Commissioner of State Tax, Katras Circle, Katras (Respondent No. 5), consider the same and decide it on its merit and allow the claim of ITC as provided in Section 140 of the JGST Act, 2017 in accordance with law by passing a reasoned order in this regard.

2. Interlocutory Application No. 3024/2022 has been preferred to delete the prayer no. 1(a) relating to vires of Rule 117 of Jharkhand Goods and Service Tax Rules, 2017. Learned senior counsel for the petitioner submits that such relief is no longer necessary and it is not being pressed. Therefore, petitioner may be allowed to delete the same.

3. There is no opposition from the other side.

4. In view of the prayer made, prayer made in para-1(a) of the writ petition is allowed to be deleted. Let such deletion be carried out by the learned counsel for the petitioner in the prayer and relief portion during course of the day. I.A. stands disposed of.

5. Learned senior counsel for the petitioner then submits that the issue relating to transitional ITC from the existing regime to the GST regime beyond time limit due to any reason whether technical glitches, illiteracy or ignorance of the parties or due to human error, now stands addressed by the Hon'ble Supreme Court in the latest judgment rendered in Special Leave to Appeal (Civil) No. 32709-32710 of 2018 and analogous cases [**Union of India and Another Versus Filco Trade Centre Pvt. Ltd. & Another**] vide judgment dated 22.07.2022.

The order dated 22.07.2022 is extracted hereunder:

“UPON hearing the counsel the Court made the following
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

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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.”

6. Learned senior counsel for the petitioner submits that the writ petition was preferred against rejection of his TRAN-1 application, manually filed on 12.06.2022, by the Deputy Commissioner of State Tax, Katras Circle, Katras, Dhanbad (Respondent No. 5) on the ground that petitioner had not filed TRAN-I Form online on GSTN Portal and there was no information to that effect from the GSTN Council to accept TRAN-I Form offline. Petitioner had prayed for opening of GSTN common portal by application dated 04.02.2019 as, according to him, he could not file it due to technical difficulty in common portal. Learned counsel for the petitioner submits that the petitioner is registered under the GSTN regime and had filed all returns under the JVAT Act up to 30.06.2017 claiming carry forward of the ITC of Rs. 82,36,178.51, but could not avail it because of technical glitches in online filing. However, it is submitted that the Apex Court has irrespective of the reasons for not filing TRAN-I Form, allowed it to be filed within the period 01.09.2022 to 31.10.2022. As such, the instant writ petition may be disposed of so that the petitioner can file the requisite GST TRAN-I Form to avail transitional credit during the window period of 01.09.2022 to 31.10.2022. Rest of the exercise relating to verification of the claims / transitional credit and passing of appropriate orders thereon has been mandated upon the concerned officer

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within a period of 90 days thereafter after granting appropriate reasonable opportunity to the parties concerned. The Apex Court has also directed that thereafter transitional credit be reflected in the Electronic Credit Ledger.

7. Learned counsel for the State and GSTN submit that the direction issued by the Apex Court in the case of **Filco Trade Centre Pvt. Ltd. and Another (Supra)** shall govern the case of the petitioner and similarly situated persons.

8. We have taken note of the submission of learned counsel for the parties in the light of the prayer and pleadings made by the writ petitioner. As per order dated 22.07.2022 passed by the Apex Court, any aggrieved registered assessee shall file relevant Form TRAN-1 and TRAN-2 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) within this window period of 01.09.2022 till 31.10.2022. As such, case of the petitioner would also abide by the said direction. Writ petition is accordingly disposed of so that the petitioner may avail of the direction issued by the Apex Court in the case of **Filco Trade Centre Pvt. Ltd. and Another (Supra)**.

(Aparesh Kumar Singh, J)

(Deepak Roshan, J)

Ranjeet/