

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23rd DAY OF FEBRUARY 2021

PRESENT

THE HON'BLE Mrs. JUSTICE B.V.NAGARATHNA

AND

THE HON'BLE Mrs. JUSTICE M.G.UMA

W.A.NO.18 OF 2020(T-RES)

C/W.

W.A.NO.104 OF 2020(T-RES)

W.A.NO.105 OF 2020(T-RES)

W.A.NO.19 OF 2020(T-RES)

W.A.NO.206 OF 2020(T-RES)

W.A.NO.207 OF 2020(T-RES)

W.A.NO.208 OF 2020(T-RES)

W.A.NO.209 OF 2020(T-RES)

W.A.NO.210 OF 2020(T-RES)

W.A.NO.23 OF 2020(T-RES)

W.A.NO.27 OF 2020(T-RES)

W.A.NO.294 OF 2020(T-RES)

W.A.NO.38 OF 2020(T-RES)

W.A.NO.51 OF 2020(T-RES)

W.A.NO.56 OF 2020(T-RES)

W.A.NO.75 OF 2020(T-RES)

W.A.NO.292 OF 2020(T-RES)

W.A.NO.293 OF 2020(T-RES)

W.A.NO.295 OF 2020(T-RES)

W.A.NO.296 OF 2020(T-RES)

W.A.NO.298 OF 2020(T-RES)

W.A.NO.556 OF 2020(T-RES)

IN W.A.NO.18 OF 2020

BETWEEN:

- 1 . UNION OF INDIA
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
THROUGH ITS SECRETARY (REVENUE)

NORTH BLOCK,
NEW DELHI-110001

- 2 . THE NODAL OFFICER/
PRINCIPAL CHIEF COMMISSIONER - DIVISION 7,
CENTRAL GOODS AND SERVICE TAXES,
BENGALURU WEST COMMISSIONERATE,
POST BOX NO. 5400,
C.R. BUILDING,
BENGALURU-560001
- 3 . GOODS AND SERVICE TAX NETWORK
THROUGH ITS CHAIRMAN,
EAST WING 4TH FLOOR,
WORLD MARK, 1, AEROCITY,
NEW DELHI-110037
- 4 . THE OFFICE OF THE GOODS AND SERVICE TAX,
COUNCIL, TOWER 11, 5TH FLOOR,
JEEVAN BHARATHI BUILDING,
JANPATH ROAD,
CONNAUGHT PLACE,
NEW DELHI-110001

...APPELLANTS

(BY SRI: VIKRAM ADITYA HUILGOL, ADVOCATE)

AND:

- 1 . M/s ASAID PAINTS LIMITED
BALAGRANAHALLI VILLAGE,
28TH KM STONE, HOSUR ROAD,
ATTIBELE INDUSTRIAL AREA,
BENGALURU-562 107.
- 2 . THE COMMISSIONER OF COMMERCIAL TAXES
(GST,) VTK-1,
9TH CROSS, KALIDASA ROAD,
GANDHINAGAR,
BANGALORE-560009
- 3 . THE ASSISTANT COMMISSIONER

OF COMMERCIAL TAXES,
 LGSTO-20,
 NO.19/3, CUNNINGHAM ROAD,
 BENGALURU-560052

...RESPONDENTS

(BY SRI: ATUL K. ALUR, ADVOCATE FOR R1;
 R2 & R3 ARE FORMAL PARTIES V/O DATED
 25.2.2020)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
 KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE WRIT
 APPEAL AND SET ASIDE THE ORDER DATED 19.11.2019
 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE
 COURT IN WP NO.33290/2019 (T-RES).

IN W.A.NO.104 OF 2020

BETWEEN:

- 1 . UNION OF INDIA
 THROUGH THE SECRETARY,
 MINISTRY OF FINANCE,
 DEPARTMENT OF REVENUE,
 NO.137, NORTH BLOCK,
 NEW DELHI-110 001
- 2 . UNION OF INDIA
 THE SECRETARY
 MINISTRY OF LAW AND JUSTICE,
 4TH FLOOR, A WING,
 RAJENDRA PRASAD ROAD,
 SHASTRI BHAVAN,
 NEW DELHI-110 001
- 3 . THE GOODS AND SERVICE TAX COUNCIL
 (GST COUNCIL) THE SECRETARY
 OFFICE OF THE GST COUNCIL SECRETARY,
 5TH FLOOR, TOWER II,
 JEEVAN BHARATHI BUILDING,
 JANPATH ROAD,
 CONNAUGHT PLACE,
 NEW DELHI-110 001.

4. ASSISTANT COMMISSIONER OF BANGALORE
SOUTH DIVISION 4,
BANGALORE SOUTH COMMISSIONERATE,
KENDRIYA SADAN, KORAMANGALA,
BENGALURU-560034.

...APPELLANTS

(BY SRI: VIKRAM ADITYA HUILGOL, ADVOCATE)

AND:

- 1 . M/S HP PPS SERVICES INDIA PRIVATE LTD.,
9TH FLOOR, MUNICIPAL NO.69/3-17
WING B, AKASH BLOCK, SALARPURIA GR,
TECH PARK CMC KHATA NO.69/3 AND 69/4
PATTANDUR AGRAHARA VILLAGE, KRISHNARAJAPURAM
HOBLI,
BENGALURU-560 066.
REP BY ITS COUNTRY TAX MANAGER
DHIRAJ BINDAL
S/O KAILASH CHAND BINDAL,
AGED ABOUT 36 YEARS,
R/AT FLAT NO.306,
RAJ LAKEVIEW APARTMENT, BILEKAHALLI,
BANNERGHATTA ROAD, BANGALORE-560076.
- 2 . THE STATE OF KARNATAKA
THROUGH THE PRINCIPAL SECRETARY
FINANCE DEPARTMENT
VIDHAN SOUDHA
BENGALURU-560 001.

...RESPONDENTS

(BY SRI: K. HEMA KUMAR, AGA FOR R2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED 17.12.2019 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN WP NO.52354/2019 (T-RES).

IN W.A.NO.105 OF 2020**BETWEEN:**

- 1 . UNION OF INDIA,
THROUGH ITS SECRETARY,
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
NO. 137, NORTH BLOCK,
NEW DELHI-110 001
- 2 . UNION OF INDIA,
THE SECRETARY
MINISTRY OF LAW AND JUSTICE,
4TH FLOOR, A WING, RAJENDRA PRASAD ROAD,
SHASTRI BHAVAN,
NEW DELHI-110 001
- 3 . THE GOODS AND SERVICE TAX COUNCIL
(GST COUNCIL) THE SECRETARY
OFFICE OF THE GST COUNCIL SECRETARY,
5TH FLOOR, TOWER II,
JEEVAN BHARATHI BUILDING,
JANPATH ROAD, CONNAUGHT PLACE,
NEW DELHI-110 001
- 4 . ASSISTANT COMMISSIONER OF BANGALORE,
SOUTH DIVISION 4,
BANGALORE SOUTH COMMISSIONERATE, KENDRIYA
SADAN, KORAMANGALA
BENGALURU-560 034.

...APPELLANTS

(BY SRI. VIKRAM ADITYA HUILGOL, ADVOCATE)

AND:

- 1 . M/s H P COMPUTING AND PRINTING
SYSTEMS INDIA PRIVATE LTD.,
NO. 24, SALARPURIA ARENA
HOSUR MAIN ROAD, ADUGODI,
BENGALURU-560030.
REP BY ITS COUNTRY TAX MANAGER
DHIRAJ BINDAL
S/O KAILASH CHAND BINDAL

AGED ABOUT 36 YEARS
R/AT FLAT NO. 306, RAJ LAKE VIEW APARTMENT,
BILEKAHALLI, BANNERGHATTA ROAD,
BANGLAORE-560076.

- 2 . THE STATE OF KARNATAKA
THROUGH THE PRINCIPAL SECRETARY
FINANCE DEPARTMENT
VIDHANA SOUDHA,
BENGALURU-560 001.

...RESPONDENTS

(BY SRI: K. HEMA KUMAR, AGA FOR R2;
R1-SERVED)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE WRIT
APPEAL AND SET ASIDE THE ORDER DATED 17.12.2019
PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE
COURT IN WP NO.52355/2019 (T-RES)

IN W.A.NO.19 OF 2020

BETWEEN:

- 1 . UNION OF INDIA
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
THROUGH ITS SECRETARY (REVENUE)
NORTH BLOCK,
NEW DELHI 110001.
- 2 . THE NODAL OFFICER/
PRINCIPAL CHIEF COMMISSIONER - DIVISION 7,
CENTRAL GOODS AND SERVICE TAXES, BENGALURU
WEST COMMISSIONARATE
POST BOX NO.5400,
C.R.BUILDING,
BENGALURU 560001.
- 3 . GOODS AND SERVICE TAX NETWORK
THROUGH ITS CHAIRMAN,
EAST WING, 4TH FLOOR, WORLD WING, 1, AEROCITY,
NEW DELHI 110037.

- 4 . THE OFFICE OF THE GOODS AND SERVICE TAX COUNCIL, TOWER 11, 5TH FLOOR, JEEVAN BHARATHI BUILDING, JANPATH ROAD, CONNAUGHT PLACE, NEW DELHI 110001.

...APPELLANTS

(BY SRI: VIKRAM ADITYA HUILGOL, ADVOCATE)

AND:

- 1 . M/s AHUJA CONTINENTAL PRIVATE LIMITED
NO.1109-1110, MITTAL TOWERS,
"A" WING, M.G.ROAD,
BENGALURU 560001.
- 2 . THE COMMISSIONER OF COMMERCIAL TAXES (GST) VTK-1,
9TH CROSS, KALIDASA ROAD,
GANDHINAGAR,
BANGALORE 560000.
- 3 . THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES
LGSTO-20, NO.19/3, CUNNINGHAM ROAD, BENGALURU
560052.

...RESPONDENTS

(BY SRI: ATUL K. ALUR, ADVOCATE FOR R1;
SRI: K. HEMA KUMAR, AGA FOR R2 & R3)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED 19.11.2019 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN WP NO.33289/2019 (T-RES).

IN W.A.NO.206 OF 2020

BETWEEN:

- 1 . UNION OF INDIA
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
THROUGH ITS SECRETARY (REVENUE)
NORTH BLOCK,
NEW DELHI-110 001

- 2 . THE NODAL OFFICER/
PRINCIPAL CHIEF COMMISSIONER DIVISION – 7,
CENTRAL GOODS AND SERVICE TAXES, BENGALURU
WEST COMMISSIONERATE
POST BOX NO.5400
C R BUILDING
BENGALURU-560 001
 - 3 . GOODS AND SERVICE TAX NETWORK
THROUGH ITS CHAIRMAN
EAST WING, 4TH FLOOR
WORLD WING,1, AEROCITY,
NEW DELHI-110 037
 - 4 . THE OFFICE OF THE GOODS AND SERVICE TAX,
COUNCIL, TOWER 11, 5TH FLOOR,
JEEVAN BHARATHI BUILDING,
JANPATH ROAD, CONNAUGHT PLACE,
NEW DELHI-110001
 - 5 . THE OFFICE OF THE SUPERINTENDENT
OF CENTRAL EXCISE AND CENTRAL TAX (GST)
WEST RANGE, VISHNU PRIYA BUILDING,
AJJIARKAD, UDUPI-576 101
 - 6 . THE COMMISSIONER OF
CENTRAL EXCISE AND CENTRAL TAX
7TH FLOOR, TRADE CENTRE BUNTS HOSTEL ROAD,
MANGALORE-575003
 - 7 . THE ASSISTANT COMMISSIONER
OF CENTRAL TAX (GST),
MANGALORE COMMISSIONERATE,
VISHNUPRIYA BUILDING, LBS MARG,
AJJIARKAD, UDUPI-576 101
- ...APPELLANTS
- (BY SRI: VIKRAM ADITYA HUILGOL, ADVOCATE)

AND:

M/s SAI RADHA PROJECTS PRIVATE LIMITED
III FLOOR CHRISTA JYOTHI COMPLEX,
K M MARG
UDUPI - 576101

(REPRESENTED BY ITS MANAGING DIRECTOR
SHRI MANOHAR S SHETTY)

...RESPONDENT

(BY SRI: ATUL K. ALUR, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED 03.12.2019 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN WP NO.51622/2019 (T-RES).

IN W.A.NO.207 OF 2020

BETWEEN:

- 1 . UNION OF INDIA
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
THROUGH ITS SECRETARY (REVENUE)
NORTH BLOCK,
NEW DELHI-110 001
- 2 . THE NODAL OFFICER/
PRINCIPAL CHIEF COMMISSIONER DIVISION – 7,
CENTRAL GOODS AND SERVICE TAXES, BENGALURU
WEST COMMISSIONERATE
POST BOX NO.5400
C R BUILDING
BENGALURU-560 001
- 3 . GOODS AND SERVICE TAX NETWORK
THROUGH ITS CHAIRMAN
EAST WING, 4TH FLOOR
WORLD WING,1, AEROCITY,
NEW DELHI-110 037
- 4 . THE OFFICE OF THE GOODS AND SERVICE TAX,
COUNCIL, TOWER 11, 5TH FLOOR,
JEEVAN BHARATHI BUILDING,
JANPATH ROAD, CONNAUGHT PLACE,
NEW DELHI-110001
- 5 . THE COMMISSIONER OF CENTRAL EXCISE

7TH FLOOR, TRADE CENTRE BUNTS HOSTEL ROAD,
MANGALORE-575003

6. THE OFFICE OF THE SUPERINTENDENT
OF CENTRAL EXCISE AND CENTRAL TAX (GST),
WEST RANGE, VISHNUPRIYA BUILDING,
AJJIARKAD,
UDUPI-576 101

...APPELLANTS

(BY SRI: VIKRAM ADITYA HUILGOL, ADVOCATE)

AND:

M/s SAI RADHA PHARMA (INDIA) PVT LTD
DOOR NO 10-3-66/A (2) 10-3-66/A (3)
II AND III FLOOR
SAI RADHA BHAKTI, VST ROAD
UDUPI - 576101

(REPRESENTED BY ITS MANAGING DIRECTOR
SHRI MANOHAR S SHETTY)

...RESPONDENT

(BY SRI: ATUL K. ALUR, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE WRIT
APPEAL AND SET ASIDE THE ORDER DATED 03.12.2019
PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE
COURT IN WP NO.51527/2019 (T-RES).

IN W.A.NO.208 OF 2020

BETWEEN

1. UNION OF INDIA
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE
THROUGH ITS SECRETARY (REVENUE)
NORTH BLOCK
NEW DELHI-110 001

- 2 . THE NODAL OFFICER/
PRINCIPAL CHIEF COMMISSIONER DIVISION - 7
CENTRAL GOODS AND SERVICE TAXES, BENGALURU
WEST COMMISSIONARATE
POST BOX NO.5400
C R BUILDING
BENGALURU-560 001
 - 3 . GOODS AND SERVICE TAX NETWORK
THROUGH ITS CHAIRMAN
EAST WING, 4TH FLOOR
WORLD MARK-1, AEROCITY
NEW DELHI-110 037
 - 4 . THE OFFICE OF THE GOODS AND SERVICE TAX
COUNCIL TOWER 11 5TH FLOOR
JEEVAN BHARATHI BUILDING
JANPATH ROAD, CONNAUGHT PLACE
NEW DELHI-110001
 - 5 . THE OFFICE OF THE SUPERINTENDENT
OF CENTRAL EXCISE AND CENTRAL TAX (GST)
WEST RANGE, VISHNU PRIYA BUILDING
AJJARKAD, UDUPI-576 101
 - 6 . THE COMMISSIONER OF CENTRAL
EXERCISE AND CENTRAL TAX
7TH FLOOR, TRADE CENTRE BUNTS HOSTEL ROAD,
MANGALORE-575003
- ...APPELLANTS

(BY SRI: VIKRAM ADITYA HUILGOL, ADVOCATE)

AND:

M/s P S BHAT BROTHER
4-6-574/15 AND 16
BRIGADE OALZA KARANGALADY
MANGALORE-575 003
(REP BY ITS PARTNER
SHRI MANOHAR S SHETTY)

...RESPONDENT

(BY SRI: ATUL.K. ALUR, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED 03.12.2019 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN WP NO.51604/2019 (T-RES).

IN W.A.NO.209 OF 2020

BETWEEN:

- 1 . UNION OF INDIA
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
THROUGH ITS SECRETARY (REVENUE)
NORTH BLOCK,
NEW DELHI-110 001
- 2 . THE NODAL OFFICER/
PRINCIPAL CHIEF COMMISSIONER DIVISION - 7
CENTRAL GOODS AND SERVICE TAXES BENGALURU
WEST COMMISSIONERATE
POST BOX NO.5400
C R BUILDING
BENGALURU-560 001
- 3 . GOODS AND SERVICE TAX NETWORK
THROUGH ITS CHAIRMAN,
EAST WING, 4TH FLOOR
WORLD MARK-1, AEROCITY,
NEW DELHI-110 037
- 4 . THE OFFICE OF THE GOODS AND SERVICE TAX
COUNCIL, TOWER 11 5TH FLOOR,
JEEVAN BHARATHI BUILDING
JANPATH ROAD, CONNAUGHT PLACE
NEW DELHI-110001
- 5 . THE OFFICE OF THE SUPERINTENDENT
OF CENTRAL EXCISE AND CENTRAL TAX (GST) WEST
RANGE, VISHNU PRIYA BUILDING
AJJIARKAD, UDUPI-576 101
- 6 . THE COMMISSIONER OF CENTRAL
EXCISE AND CENTRAL TAX

7TH FLOOR, TRADE CENTRE BUNTS HOSTEL ROAD,
MANGALORE-575003

- 7 . THE ASSISTANT COMMISSIONER
OF CENTRAL TAX (GST)
MANGALORE COMMISSIONERATE
VISHNU PRIYA BUILDING
LBS MARG, UDUPI - 576101

...APPELLANTS

(BY SRI: VIKRAM ADITYA HUILGOL, ADVOCATE)

AND:

M/s SAI RADHA DEVELOPERS
C J COMPLEX, 3RD FLOOR, SUPER BAZAR
K M MARG, UDUPI - 576101
(REP BY ITS PARTNER
SHRI MANOHAR S SHETTY)

...RESPONDENT

(BY SRI: ATUL.K. ALUR, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE WRIT
APPEAL AND SET ASIDE THE ORDER DATED 03.12.2019
PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE
COURT IN WP NO.51623/2019 (T-RES).

IN W.A.NO.210 OF 2020

BETWEEN

- 1 . UNION OF INDIA
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
THROUGH ITS SECRETARY (REVENUE)
NORTH BLOCK,
NEW DELHI-110 001
- 2 . THE NODAL OFFICER/
PRINCIPAL CHIEF COMMISSIONER DIVISION - 7
CENTRAL GOODS AND SERVICE TAXES BENGALURU
WEST COMMISSIONERATE
POST BOX NO.5400

C R BUILDING
BENGALURU-560 001

- 3 . GOODS AND SERVICE TAX NETWORK
THROUGH ITS CHAIRMAN,
EAST WING, 4TH FLOOR
WORLD MARK-1, AEROCITY,
NEW DELHI-110 037
- 4 . THE OFFICE OF THE GOODS AND SERVICE TAX
COUNCIL, TOWER 11 5TH FLOOR,
JEEVAN BHARATHI BUILDING
JANPATH ROAD, CONNAUGHT PLACE
NEW DELHI-110001
- 5 . THE OFFICE OF THE SUPERINTENDENT
OF CENTRAL EXCISE AND CENTRAL TAX (GST) WEST
RANGE, VISHNU PRIYA BUILDING
LBS MARG, AJJIARKAD,
UDUPI-576 101
- 6 . THE COMMISSIONER OF CENTRAL
EXCISE AND CENTRAL TAX
7TH FLOOR, TRADE CENTRE BUNTS HOSTEL ROAD,
MANGALORE-575003
- 7 . THE ASSISTANT COMMISSIONER
OF CENTRAL EXCISE AND CENTRAL TAX (GST)
MANGALORE COMMISSIONERATE
VISHNU PRIYA BUILDING
LBS MARG, AJJIARKAD,
UDUPI-576 101

...APPELLANTS

(BY SRI: VIKRAM ADITYA HUILGOL, ADVOCATE)

AND:

M/s SAI RADHA MOTORS
II FLOOR 10-3-66 A 2
SAI RADHA BHAKTI
VIDYASAMUDRA THEERTHA ROAD

KALSANKA UDUPI - 576101
(REP BY ITS PARTNER
SHRI MANOHAR S SHETTY)

...RESPONDENT

(BY SRI: ATUL K. ALUR, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED 03.12.2019 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN WP NO.51628/2019 (T-RES).

IN W.A.NO.23 OF 2020

BETWEEN:

- 1 . UNION OF INDIA
MINISTRY OF FINANCE
REPRESENTED BY SECRETARY
128-A/NORTH BLOCK,
NEW DELHI - 110 001
- 2 . THE CENTRAL BOARD OF INDIRECT TAXES
AND CUSTOMS
R.NO. 227-B, DEPARTMENT OF REVENUE
NORTH BLOCK,
NEW DELHI - 110 001
- 3 . THE COMMISSIONER OF CENTRAL TAX
BANGALORE NORTH COMMISSIONERATE
HMT BHAVAN, GANGANAGAR
BANGALORE - 560 032
- 4 . JOINT COMMISSIONER OF CENTRAL TAX
BANGALORE NORTH COMMISSIONERATE
HMT BHAVAN, GANGANAGAR
BANGALORE - 560 032
- 5 . SUPERINTENDENT OF CENTRAL TAX
NORTH DIVISION 5, 2ND FLOOR,
NO.16/1, S.P. COMPLEX,

LALBHAGH ROAD
BANGALORE - 560 027

...APPELLANTS

(BY SRI: JEEVAN J NEERALGI, ADVOCATE)

AND:

M/s ESCON GENSETS PRIVATE LIMITED
NO.31, 6TH B MAIN, 7TH CROSS, HMT LAYOUT,
R.T.NAGAR,

BANGALORE - 560 032

...RESPONDENT

(BY SRI: RAGHURAMAN, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT DATED 19.11.2019 PASSED BY THE LEARNED SINGLE JUDGE IN W.P.NO.27590/2018 AND 29138-141/2018 AND CONSEQUENTLY DISMISS THE W.P.NO.27590/2018 AND 29138-141/2018.

IN W.A.NO.27 OF 2020

BETWEEN

- 1 . UNION OF INDIA
THROUGH ITS REVENUE SECRETARY,
DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE,
128-A/NORTH BLOCK,
NEW DELHI-110001.
- 2 . THE CENTRAL BOARD OF INDIRECT TAXES
AND CUSTOMS
THROUGH ITS CHAIRMAN,
NORTH BLOCK, NEW DELHI.
- 3 . THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR, TOWER II,
JEEVAN BHARATI BUILDING,
JANPATH ROAD, CONNAUGHT PLACE,
NEW DELHI-110001.

- 4 . THE COMMISSIONER OF CGST
S P COMPLEX, LALBAGH ROAD,
BANGALORE-560027.
- 5 . GOODS AND SERVICES TAX NETWORK
4TH FLOOR, EAST WING, WORLD MARK-1, AEROCITY,
NEW DELHI-110037.
- 6 . THE ASSISTANT COMMISSIONER OF CGST
RANGE D, SOUTH DIVISION,
KENDRIYA SADAN, KORAMANGALA,
BANGALORE-560034.

...APPELLANTS

(BY SRI: JEEVAN J. NEERALGI, ADVOCATE)

AND:

- 1 . M/s VERTIVE ENERGY PRIVATE LIMITED
SJR PRIMUS, 4TH FLOOR, 7TH BLOCK,
KORAMANGALA,
BANGALORE-560095.
- 2 . THE STATE OF KARNATAKA
THROUGH GOVERNMENT PLEADER,
HIGH COURT, BANGALORE-560001.

...RESPONDENTS

(BY SRI: K.V. SATEESH CHANDRA, ADVOCATE FOR R1;
SRI: K. HEMA KUMAR, AGA FOR R2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT DATED 19.11.2019 PASSED BY THE LEARNED SINGLE JUDGE IN W.P.NO.39692/2018 AND CONSEQUENTLY DISMISS THE W.P.NO.39692/2018.

IN W.A.NO.294 OF 2020

BETWEEN:

- 1 . THE UNION OF INDIA
THROUGH ITS REVENUE SECRETARY,
DEPARTMENT OF REVENUE,

MINISTRY OF FINANCE,
128-A/NORTH BLOCK,
NEW DELHI-110001.

- 2 . THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR, TOWER II,
JEEVAN BHARTI BUILDING,
JANPATH ROAD, CONNAUGHT PLACE,
NEW DELHI-110001
- 3 . I.T GRIEVANCES REDRESSAL COMMITTEE
THE GOODS AND SERVICES TAX
COUNCIL SECRETARIAT,
5TH FLOOR, TOWER II,
JEEVAN BHARATI BUILDING,
JANAPATH ROAD,
CONNAUGHT PLACE,
NEW DELHI-110001
- 4 . CHIEF EXECUTIVE OFFICER
THE GOODS AND SERVICE TAX NETWORK,
EAST WING, 4TH FLOOR,
WORLD MARK-1, AERO CITY,
NEW DELHI-110037

...APPELLANTS

(BY SRI: JEEVAN J NEERALGI, ADVOCATE)

AND:

- 1 . M/s JUWI INDIA RENEWABLE ENERGIES PVT LTD
SAMHITHA PLAZA, NO.248, 1ST FLOOR,
80 FEET ROAD, DEFENCE COLONY,
INDIRANAGAR,
BANGALORE-560038
(REP BY ITS DIRECTOR SRI MUNIRAJ T M)
- 2 . THE GOVERNMENT OF KARNATAKA
REPRESENTED BY COMMISSIONER
OF COMMERCIAL TAXES, KARNATAKA,
DEPARTMENT OF COMMERCIAL TAXES,
VANIJYA TERIGE KARYALAYA,
KALIDAS ROAD, GANDHINAGAR,
BANGALORE-560009

- 3 . NODAL OFFICER AND JOINT COMMISSIONER
OF COMMERCIAL TAX (ADMINISTRATION)
DIVISIONAL GST OFFICE-6,
III FLOOR,
KIADB BUILDING,
2ND STAGE,
PEENYA,
BANGALORE-560058

...RESPONDENTS

(BY SRI: Y.C. SHIVAKUMAR, ADVOCATE FOR R1)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT DATED 26.11.2019 PASSED BY THE LEARNED SINGLE JUDGE IN W.P.NO.50914/2019 AND CONSEQUENTLY DISMISS THE W.P.NO.50914/2019.

IN W.A.NO.38 OF 2020

BETWEEN

- 1 . UNION OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
THROUGH ITS SECRETARY (REVENUE)
ROOM NO.46 NORTH BLOCK
NEW DELHI-110 001
- 2 . GST COUNCIL
THROUGH ITS CHAIRPERSON
UNION FINANCE MINISTER
MINISTRY OF FINANCE NORTH BLOCK
NEW DELHI-110 001
- 3 . GOODS AND SERVICE TAX NETWORK
THROUGH ITS CHAIRMAN,
EAST WING, 4TH FLOOR
WORLD MARK-1 AEROCITY
NEW DELHI-110 037
- 4 . GST COMMISSIONERATE

CENTRAL REVENUE BUILDING
QUEENS ROAD,
BENGALURU-560001

...APPELLANTS

(BY SRI: VIKRAM ADITYA HUILGOL, ADVOCATE)

AND:

- 1 . ORIGAMI CELLULO PRIVATE LIMITED
S8 AND S9 SY NO.38, APPAREL PAR
INDUSTRIAL AREA, ARENAHALLI
GUDDADAHALLI VILLAGE,
DODDABALLAPUR
BENGALURU RURAL DISTRICT
BENGALURU-561203
- 2 . STATE OF KARNATAKA
FINANCE DEPARTMENT
VIDHANA SOUDHA
BENGALURU-560001

...RESPONDENTS

(BY SRI: K. MALLAHA RAO, ADVOCATE FOR R1;
SRI: K. HEMA KUMAR, AGA FOR R2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE WRIT
APPEAL AND SET ASIDE THE ORDER DATED 19.11.2019
PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE
COURT IN W.P.NO.15236/2018 (T-RES).

IN W.A.NO.51 OF 2020

BETWEEN

- 1 . UNION OF INDIA
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
THROUGH ITS SECRETARY (REVENUE)
NORTH BLOCK,
NEW DELHI 110001.
- 2 . GOODS AND SERVICES TAX NETWORK
THROUGH ITS CHAIRMAN

EAST WING, 4TH FLOOR,
WORLD MARK 1 AEROCITY,
NEW DELHI 110037,

- 3 . THE OFFICE OF THE GOODS AND SERVICE TAX COUNCIL,
TOWER II, 5TH FLOOR,
JEEVAN BHARATHI BUILDING,
JANPATH ROAD, CONNAUGHT PLACE,
NEW DELHI 110001
- 4 . THE NODAL OFFICER/
PRINCIPAL CHIEF COMMISSIONER-DIVISION 7 CENTRAL
GOODS AND SERVICE TAXES, BENGALURU WEST
COMMISSIONERATE,
POST BOX NO. 5400, C.R.BUILDING,
BENGALURU - 560 001
- 5 . THE ASSISTANT COMMISSIONER OF
CENTRAL TAX (GST)
WEST DIVISION-6, RANGE AWD2, BMTC COMPLEX,
BANGALORE NORTH COMMISSIONERATE,
3RD FLOOR, NO.16/1, S.P.COMPLEX,
LALBHAGH ROAD,
BENGALURU - 560 002

...APPELLANTS

(BY SRI: VIKRAM ADITYA HUILGOL, ADVOCATE)

AND:

M/s ORCHESTRATE SYSTEMS
PRIVATE LIMITED
NO.4, 12TH MAIN ROAD,
VASANTHNAGAR,
BENGALURU-560052
(REP BY ITS DIRECTOR MR. NAYAZ AHMED)

...RESPONDENT

(BY SRI: ATUL K. ALUR, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE WRIT
APPEAL AND SET ASIDE THE ORDER DATED 10.12.2019

PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN W.P.NO.51870/2019 (T-RES)

IN W.A.NO.56 OF 2020

BETWEEN

- 1 . COMMISSIONER OF CENTRAL TAX, GST
BANGALORE NORTH WEST COMMISSIONERATE
2ND FLOOR, BMTC BUS STAND COMPLEX,
SHIVAJINAGAR,
BANGALORE-560 051
- 2 . ASSISTANT COMMISSIONER OF CENTRAL TAX GST
NWD -1, DIVISION, BANGALORE NORTH WEST,
COMMISSIONERATE, 2ND FLOOR,
BMTC BUS STAND COMPLEX,
SHIVAJINAGAR
BANGALORE-560 051.
- 3 . ASSISTANT COMMISSIONER OF
CENTRAL TAX (ADJN)
BANGALORE NORTH WEST COMMISSIONERATE
2ND FLOOR, BMTC BUS STAND COMPLEX,
SHIVAJINAGAR, BANGALORE-560 051
- 4 . THE UNION OF INDIA
THROUGH ITS REVENUE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE,
128-A, NORTH BLOCK,
NEW DELHI
- 5 . THE CENTRAL BOARD OF INDIRECT
TAXES AND CUSTOMS
THROUGH ITS CHAIRMAN,
NORTH BLOCK
NEW DELHI-110 001
- 6 . THE GOODS AND SERVICE TAX COUNCIL
5TH FLOOR, TOWER II,
JEEVAN BHARATI BUILDING,
JANAPATH ROAD,
CONNAUGHT PLACE,
NEW DELHI-110 001

7 . THE NODAL OFFICER
 ADDITIONAL COMMISSIONER (PCCO)
 OFFICE OF PRINCIPAL COMMISSIONER OF
 CENTRAL TAX, BANGALORE ZONE,
 C.R.BUILDING, QUEENS ROAD,
 BANGALORE-560 001

...APPELLANTS

(BY SRI: JEEVAN J. NEERALGI, ADVOCATE)

AND:

M/s KONGOVI PRIVATE LIMITED
 NO.377, 10TH CROSS, 4TH PHASE,
 PEENYA INDUSTRIAL AREA
 BANGALORE-560 058

...RESPONDENT

(BY SRI: M.S. HARIPRASAD AND
 SRI: G. SHIVADASS, SENIOR COUNSEL REPRESENTING
 PRASHANTH SHIVADASS, ADVOCATES)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
 KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
 IMPUGNED JUDGMENT DATED 19.11.2019 PASSED BY THE
 LEARNED SINGLE JUDGE IN W.P.NO.26410/2019 AND
 CONSEQUENTLY DISMISS THE W.P.NO.26410/2019.

IN W.A.NO.75 OF 2020

BETWEEN:

- 1 . UNION OF INDIA
 MINISTRY OF FINANCE,
 DEPARTMENT OF REVENUE,
 THROUGH ITS SECRETARY (REVENUE)
 NORTH BLOCK,
 NEW DELHI - 110 001
- 2 . GOODS AND SERVICE TAX NETWORK
 THROUGH ITS CHAIRMAN
 EAST WING, 4TH FLOOR,

WORLD MARK-1, AEROCITY
NEW DELHI - 110 037

- 3 . THE OFFICE OF THE GOODS AND SERVICE
TAX COUNCIL
TOWER II, 5TH FLOOR,
JEEVAN BHARATHI BUILDING
JANPATH ROAD, CONNAUGHT PLACE
NEW DELHI - 110 001
 - 4 . THE NODAL OFFICER/
PRINCIPAL CHIEF COMMISSIONER DIVISION 7
CENTRAL GOODS AND SERVICE TAXES
BANGALORE WEST COMMISSIONERATE
POST BOX NO.5400, C.R.BUILDING
BENGALURU - 560 001
 - 5 . THE ASSISTANT COMMISSIONER OF
CENTRAL TAX (GST)
WEST DIVISION-2,
RANGE-AWD2,
BMTC COMPLEX,
BANASHANKARI
BANGALORE - 560 070
- ...APPELLANTS

(BY SRI: K M SHIVAYOGISWAMY, ADVOCATE)

AND:

M/s COMPASS
#564, 53RD CROSS, 5TH BLOCK,
RAJAJINAGAR
BANGALORE - 560 010
(REPRESENTED BY ITS PROP
SRI POORNACHANDRA SRIDHAR)

...RESPONDENT

(BY SRI: ATUL K. ALUR, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE WRIT
APPEAL AND SET ASIDE THE ORDER DATED 10.12.2019
PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE
COURT IN W.P.NO.51869/2019 (T-RES).

IN W.A.NO.292 OF 2020**BETWEEN:**

- 1 . THE UNION OF INDIA
THROUGH ITS REVENUE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
137, NORTH BLOCK
NEW DELHI-1100 001
 - 2 . THE CENTRAL BOARD OF INDIRECT
TAXES AND CUSTOMS
THROUGH ITS CHAIRMAN
NORTH BLOCK
NEW DELHI-110 001
 - 3 . THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR, TOWER II
JEEVAN BHARATI BUILDING
JANAPATH ROAD
CONNAUGHT PLACE
NEW DELHI-110 001
 - 4 . THE JOINT COMMISSIONER OF
CENTRAL TAX (E-AUDIT)
VANIJYA THERIGE KARYALAYA
KALIDAS MARG
GANDHI NAGAR
BANGALORE-560 009
 - 5 . ASSISTANT COMMISSIONER OF CENTRAL TAX
LGSTO-15, DGSTO-4, VTK-2, 'A' BLOCK
1ST FLOOR, KORAMANGALA

BANGALORE-560 047
- ...APPELLANTS
- (BY SRI: JEEVAN J NEERALGI, ADVOCATE)

AND:

- 1 . M/s LIFESTYLE INTERNATIONAL PRIVATE LIMITED
77, TOWN CENTER, BUILDING NO.3
2ND FLOOR, WEST WING, OLD AIRPORT ROAD

YEMLUR P.O
BANGALORE-560 037

- 2 . THE STATE OF KARNATAKA
THROUGH GOVERNMENT PLEADER
HIGH COURT OF KARNATAKA
BANGALORE-560 001

...RESPONDENTS

(BY SRI: RAVI RAGHAVAN AND
MISS. MANASI KHARE, ADVS FOR R1;
SRI: K. HEMA KUMAR, AGA FOR R2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE IMUGNED JUDGMENT DATED 19.11.2019 PASSED BY THE LEARNED SINGLE JUDGE IN WP.NO.49714/2019 AND CONSEQUENTLY DISMISS THE WP.NO.49714/2019.

IN W.A.NO.293 OF 2020

BETWEEN:

- 1 . THE UNION OF INDIA
THROUGH ITS REVENUE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
137, NORTH BLOCK,
NEW DELHI-110001.
- 2 . THE CENTRAL BOARD OF INDIRECT TAXES
AND CUSTOMS
THROUGH ITS CHAIRMAN NORTH BLOCK
NEW DELHI-110001.
- 3 . THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR, TOWER II,
JEEVAN BHARATI BUILDING
JANAPATH ROAD
CONNAUGHT PLACE
NEW DELHI-110001.
- 4 . THE COMMISSIONER OF CENTRAL TAX
BANGALORE-EAST, C R BUILDING
QUEENS ROAD

BANGALORE-560001.

- 5 . ASSISTANT COMMISSIONER OF CENTRAL
TAX EAST DIVISION-7,
BANGALORE EAST COMMISSIONERATE,
BMTc BUS STAND,
HAL AIRPORT ROAD,
DOMLUR,
BANGALORE-560071.

...APPELLANTS

(BY SRI: JEEVAN J NEERALGI, ADVOCATE)

AND:

- 1 . M/s HOSAMANE PRECISION PARTS
NO.120, KAMBLIPURA GATE
SHIDALAGHATTA ROAD
HASIGALA POST
HOSKOTE-562114
(REP BY IT MANAGING PARTNER
SRI. RAJITH RAGHAVENDRA)
- 2 . THE STATE OF KARNATAKA
THROUGH GOVERNMENT PLEADER,
HIGH COURT OF KARNATAKA
BANGALORE-560001.
- 3 . THE ASSISTANT COMMISSIONER OF
COMMERCIAL TAX
LGST-36,
DVO-5, BANGALORE-5600075

...RESPONDENTS

(BY SRI: S. VENKATESH KUMAR, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
IMPUGNED JUDGMENT DATED 19.11.2019 PASSED BY THE
LEARNED SINGLE JUDGE IN WP.NO.24302/2019.

IN W.A.NO.295 OF 2020**BETWEEN:**

- 1 . THE UNION OF INDIA
THROUGH ITS REVENUE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE,
137, NORTH BLOCK,
NEW DELHI-110001

- 2 . GOODS AND SERVICES TAX COUNCIL
THROUGH ITS SPECIAL SECRETARY
5TH FLOOR, TOWER II,
JEEVAN BHARTI BUILDING
JANAPATH ROAD, CONNAUGHT PLACE
NEW DELHI-110001.

- 3 . I.T. GRIEVANCES REDRESSAL COMMITTEE
THE GOODS AND SERVICES TAX
COUNCIL SECRETARIAT
5TH FLOOR, TOWER II,
JEEVAN BHARATI BUILDING
JANAPATH ROAD, CONNAUGHT PLACE
NEW DELHI-110001.

- 4 . THE GOODS AND SERVICE TAX NETWORK
EAST WING, 4TH FLOOR,
WORLD MARK-1, AERO CITY,
NEW DELHI-110037

...APPELLANTS

(BY SRI: JEEVAN J NEERALGI, ADVOCATE)

AND:

- 1 . M/s PLASTO INC
NO. 347, 1ST STAGE, 2ND BLOCK,
HBR LAYOUT, BANGALORE-560043
(REP. BY ITS PARTNER SRI. M.S. JAVID)

- 2 . THE ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES
LOCAL GST OFFICE-55, NO.10 AND 16A,
BDA COMPLEX, HBR LAYOUT,

KALYANA NAGAR,
BANGALORE-560043.

- 3 . NODAL OFFICER AND JOINT COMMISSIONER
OF COMMERCIAL TAX, (ADMINISTRATION)
DIVISIONAL GST OFFICE-6,
III FLOOR, KIADBB BUILDING, 2ND STAGE, PEENYA
BANGALORE-560058.

...RESPONDENTS

(BY SRI: Y.C. SHIVAKUMAR, ADVOCATE FOR R1)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT DATED 17.12.2019 PASSED BY THE LEARNED SINGLE JUDGE IN WP.NO.52322/2019(T-RES) AND CONSEQUENTLY DISMISS THE WP.NO.52322/2019(T-RES).

IN W.A.NO.296 OF 2020

BETWEEN:

- 1 . ASSISTANT COMMISSIONER OF L.V.O
LGSTO 045 BENGALURU.
- 2 . COMMISSIONER OF CENTRAL TAXES
BENGALURU EAST COMMISSIONERATE,
BMTCL BUILDING, OLD AIRPORT ROAD,
DOMLUR, BANGALORE-560 071.
- 3 . THE UNION OF INDIA
MINISTRY OF FINANCE,
THROUGH ITS SECRETARY,
DEPARTMENT OF REVENUE,
137, NORTH BLOCK,
NEW DELHI-110001.
- 4 . THE CENTRAL BOARD OF INDIRECT
TAXES AND CUSTOMS
THROUGH ITS CHAIRMAN
NORTH BLOCK,
NEW DELHI-110 001.

...APPELLANTS

(BY SRI: JEEVAN J NEERALGI, ADVOCATE)

AND:

M/s WEIWO COMMUNICATIONS PRIVATE LIMITED
 NO.464, KRISHNA TEMPLE ROAD,
 INDIRANAGAR 1ST STAGE,
 NEXT TO SBI BANK,
 BENGALURU-560 038
 (REPRESENTED BY SRI.MA HAIDONG,
 AGED ABOUT 30 YEARS
 S/O XIAO SIAN MA,
 DIRECTOR OF M/S. WEIWO COMMUNICATION
 PRIVATE LIMITED)

...RESPONDENT

(BY SRI: V. RAGHURAMAN, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
 KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
 IMPUGNED JUDGMENT DATED 19.11.2019 PASSED BY THE
 LEARNED SINGLE JUDGE IN WP.NOS. 33564-33566/2018 AND
 CONSEQUENTLY DISMISS THE WP.NO. 33564-33566/2018.

IN W.A.NO.298 OF 2020**BETWEEN:**

- 1 . COMMISSIONER OF CENTRAL TAX GST
 EAST COMMISSIONERATE
 TTMC/BMTC BUS STAND BUILDING,
 OLD AIRPORT ROAD
 DOMLUR BANGALORE-560071
- 2 . THE UNION OF INDIA
 THROUGH ITS REVENUE SECRETARY,
 DEPARTMENT OF REVENUE
 MINISTRY OF FINANCE
 128-A NORTH BLOCK
 NEW DELHI-110001
- 3 . THE CENTRAL BOARD OF INDIRECT TAXES
 AND CUSTOMS
 THROUGH ITS CHAIRMAN
 NORTH BLOCK
 NEW DELHI-110001

- 4 . THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR, TOWER II,
JEEVAN BHARATI BUILDING
JANAPATH ROAD
CONNAUGHT PLACE
NEW DELHI-110001
- 5 . THE DEPUTY COMMISSIONER OF CENTRAL TAX
EAST DIVISION-8,
BANGALORE EAST COMMISSIONERATE
2ND FLOOR, TTMC/BMTC BUS STAND BUILDING, OLD
AIRPORT ROAD, DOMLUR,
BANGALORE-560071

...APPELLANTS

(BY SRI: JEEVAN J NEERALGI, ADVOCATE)

AND

M/s WHIZDM INNOVATIONS PRIVATE LIMITED
3RD FLOOR, SURVEY NO.17/1, OUTER RING ROAD
KADUBEESANAHALLI
BANGALORE-560087

...RESPONDENT

(BY SRI: PRASHANTHA SHIVDASS, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT DATED 19.11.2019 PASSED BY THE LEARNED SINGLE JUDGE IN WP.NO.50294/2019 AND CONSEQUENTLY DISMISS THE WP.NO.50294/2019.

IN W.A.NO.556 OF 2020

BETWEEN:

- 1 . THE ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES
LGSTO-075, DVO-06
'B' BLOCK, KIADB BUILDING
14TH CROSS, PEENYA INDUSTRIAL AREA
BENGALURU-560 058

- 2 . THE JOINT COMMISSIONER OF
COMMERCIAL TAXES
DGSTO-06
KIADB BUILDING
14TH CROSS, PEENYA INDUSTRIAL AREA
BENGALURU-560 058
- 3 . THE STATE OF KARNATAKA
REPRESENTED THROUGH ITS
PRINCIPAL SECRETARY
VIDHANA SOUDHA
BENGALURU-560 001 ..APPELLANTS

(BY SRI: K. HEMA KUMAR, AGA)

AND:

- 1 . M/s PRAGATHI AUTOMATION PVT. LTD.,
NO 19. AND 20, PLOT NO.467-469
12TH CROSS, IV PHASE
PEENYA INDUSTRIAL AREA
BENGALURU-560 058
- 2 . THE UNION OF INDIA
THROUGH ITS REVENUE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
NO. 128-A, NORTH BLOCK
NEW DELHI-110 001
- 3 . THE CENTRAL BOARD OF INDIRECT TAXES
AND CUSTOMS
THROUGH ITS CHAIRMAN
NORTH BLOCK
NEW DELHI-110 001
- 4 . THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR, TOWER II,
JEEVAN BHARATHI BUILDING
JANPATH ROAD
CONNAUGHT PLACE
NEW DELHI-110001
- 5 . THE COMMISSIONER OF CGST

KARNATAKA
S P COMPLEX, LALBAGH ROAD
BENGALURU-560 027

- 6 . THE GOODS AND SERVICE TAX NETWORK
4TH FLOOR, EAST WING
WORLD MARK-1, AERO CITY
NEW DELHI-110 037

...RESPONDENTS

(BY SRI: RAVI RAGHAVAN, ADVOCATE FOR R1
VIDE ORDER DATED 23.2.2021
SRI: JEEVAN J. NEERALGI, ADVOCATE FOR R2 TO R6
VIDE ORDER DATED 23.2.2021)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED 17.12.2019 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN WP.NO.52363/2019 (T-RES).

THESE WRIT APPEALS COMING ON FOR FINAL HEARING THIS DAY, **NAGARATHNA J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

Since all these appeals raise common question of law and facts and arise from the common order passed by the learned Single Judge dated 19.11.2019 in W.P.No.33290 of 2019 (T-RES) and connected matters, they have been connected together, heard and disposed of by this common judgment.

2. These intra-court appeals are filed by the Union of India, GST Council, GST Network and GST Commissionerate, assailing the common order dated 19.11.2019 passed by the learned Single Judge in W.P.No.33290 of 2019 and connected

matters. By the said order, the learned Single Judge allowed the writ petitions and directed the appellants herein to permit the respondents/writ petitioners to file/revise the TRAN-1 either electronically or manually on or before 31.12.2019. However, the appellants herein were given liberty to verify the genuineness on the merits of the claim of the petitioners in accordance with law.

3. The facts succinctly stated are as under:

(a) Writ petitioners, who are the registered dealers under the Central Goods and Services Tax Act, 2017 ('the Act' for the sake of brevity), sought a direction to the appellants herein to permit them to file TRAN-1, being a statutory form, either electronically or manually by extending the time limit prescribed under Rule 117 of the Central Goods and Services Tax Rules, 2017 ('the Rules' for the sake of brevity) read with Section 140 of the Act so as to have the benefit of carry forward of any unutilized credit of duty to the common portal paid under the Finance Act, 1994/Karnataka Value Added Tax Act, 2003.

(b) It was contended before the learned Single Judge that several High Courts had granted the said benefit to the

assesseees and permitted the registered dealers to file or revise TRAN-1 already filed either electronically or manually, by extending the date beyond the cut off date prescribed under Rule 117 of the Rules made under the Act, reserving liberty to the appellants herein to verify the genuineness of the claims made by the registered dealers. In the said writ petitions, the Union of India as well as Central/State Tax Authorities (hereinafter referred to as 'the Revenue') had argued that in terms of the Circular dated 03.04.2018 issued by the Government of India, Input Tax Grievance Redressal Mechanism had been constituted whereby nodal officers had been appointed to redress the grievance of the registered dealers in filing the TRAN-1/TRAN-2 forms. That by virtue of Rule 117(1A) of the Rules inserted with effect from 10.09.2018 vide Notification No.48/2018-Central Tax, the Commissioner may, on the recommendations of the GST Council, extend the date for submitting the declaration in TRAN-1 by a further period on account of technical difficulties on the common portal. Therefore, reliance could not be placed on the said Rule to permit the petitioners to file or revise the TRAN-1/TRAN-2 beyond the statutory period prescribed or otherwise which would be contrary to the language employed in the said Rule.

(c) Learned Single Judge considered the submissions and observed that it was not in dispute that Rule 117(1A) permitted the registered persons who could not submit the declaration within the due date on account of technical glitches on the common portal, by a further period not beyond 31.03.2019. That, under Rule 117 of the Rules, a period of 90 days from the appointed day being 01.07.2017 was prescribed, but the same was extended from time to time upto 31.12.2019 by virtue of insertion of Sub-rule 1A to Rule 117, vide Notification No.49/2019/Central Tax dated 09.10.2019. The problem of technical glitches in the common portal was addressed by the Department by permitting the registered persons to submit their declaration in TRAN-1 upto 31.12.2019. Considering the judgments on Section 140 of the Act and the prevailing Rules, rendered by the various High Courts, learned Single Judge ultimately categorized two types of cases which would arise for consideration viz.,

"1. Registered persons who did/could not file TRAN-1 by 27.12.2017 and had no evidence of attempt to load TRAN-1.

2. Registered persons who loaded TRAN-1 by 27.12.2017 but there being some error have intended to revise the already loaded TRAN-1."

(d) Considering Section 140 along with Sections 142 and 172 of the Act as well as Rule 117(1A), learned Single Judge observed that there was an express provision to permit filing of revised TRAN-1 at an extended period for the registered persons who failed to furnish the material for having filed the same by 27.12.2017. But, in the absence of any specific period prescribed under Section 140 of the Act and in terms of introduction of Rules 117(1A) of the Rules and 120A of the Act, held the argument that there was no express provision, could not be accepted. Learned Single Judge observed that having regard to the transition from the earlier regime to the new regime viz., GST regime which is new tax regime common for the entire Nation, in terms of Section 172, a suitable order could be passed taking into consideration the difficulties which would arise during the transitory period.

(e) On the aforesaid basis, the learned Single Judge allowed the writ petitions by directing the Appellants herein to permit the petitioners/respondents herein to file/revise TRAN-1 either electronically or manually on or before 31.12.2019. Learned Single Judge further permitted the appellants herein to verify the genuineness or otherwise of the claim of the writ petitioners in accordance with law. Being aggrieved by the

order of the learned Single Judge, these appeals have been preferred.

Submissions:

4. We have heard Sri.Jeevan J. Neeralgi, Sri. Vikram Aditya Huilgol and Sri.K.M. Shivayogiswamy, learned counsel on behalf of appellant- Union of India, GST Council, GST Network and GST Commissioner and Sri. K. Hema Kumar, learned Addl. Government Advocate appearing for respondent-State of Karnataka and learned Senior Counsel Sri. G. Shivadass representing Sri. Prashanth Shivadass, Sri. M.S. Hariprasad, Sri. V. Raghuraman, Sri. Atul K. Alur, Sri. Y.C. Shivakumar and Sri. K. Mailaha Rao for the respondents/Writ petitioners. We have perused the material on record including the written submissions.

5. Learned counsel appearing for the Union of India contended that the Goods and Services Tax(GST) having been introduced in the Country with effect from 01.07.2017, Section 140 of the said Act enables the registered person to be entitled to take in his electronic credit ledger the amount of CENVAT credit carried forward in the return relating to the period immediately preceding the introduction of GST. But, Section 140 States that the said credit shall be taken "within such time

and in such manner as may be prescribed". That the time limit and the manner in which the transitional credit is to be availed is prescribed under Rule 117 of the Rules. As far as these cases are concerned, the last date for filing of TRAN-1 was extended from time to time as noted below:-

- a. Order No. 03/2017- GST 21.09.2017 – Last date of filing of TRAN-1 extended till 31.10.2017;
- b. Order No. 07/2017-GST 28.10.2017 – Last date of filing of TRAN-1 extended till 30.11.2017; and
- c. Order No.09/2017-GST 15.11.2017 – Last date of filing of TRAN-1 extended till 27.12.2017

Further, Rule 120-A of the Rules provides for revision of declaration in Form GST-TRAN-1, which states that a person who has submitted a declaration within the prescribed time may revise such declaration only once within a specified time period. The last date for revision of TRAN-1 form was also extended from time to time, as noted below:-

- a. Order No. 02/2017- GST 18.09.2017 – Last date for revision of TRAN-1 extended till 31.10.2017;
- b. Order No. 08/2017-GST 28.10.2017 – Last date for revision of TRAN-1 extended till 30.11.2017; and
- c. Order No.10/2017-GST 15.11.2017 – Last date for revision of TRAN-1 extended till 27.12.2017

6. That the respondents/ assessees have not challenged the Rules nor the Rule making power in the instant cases. Admittedly, the respondents/assesseees had failed to file their declaration forms in Form GST TRAN-1 or Form GST TRAN-2 within the prescribed period. Instead, they filed writ petitions before this Court seeking a direction to the concerned authorities for acceptance of their forms. Learned Single Judge by the impugned order dated 19.11.2019 has directed the appellants herein to permit the assesseees to file/revise their declaration forms in GST TRAN-1 or TRAN-2 either electronically or manually on or before 31.12.2019. That the impugned direction is contrary to the catena of judgments, which state that when once the cut off date is given under a statute particularly in fiscal statute, then, ordinarily courts ought not to have interfered with such cut off date. That the object and purpose of giving a cut off date under Section 140 read with Rule 117 of the Rules is well known. The same is for the purpose of smooth and swift transition from the previous existing tax system into the present GST regime which is an indirect tax regime common to the entire country. The time frame given is mandatory in nature and have to be followed in letter and spirit so as to avail the transitional benefits.

7. It was further contended that when the statutory benefit credit such as input credit is availed, then all conditions for availing the said input credit must be met. That in the instant cases, the respondents/assesseees, not having complied with the time period enunciated in Section 140 read with Rule 140 of the Rules, sought to bypass the said provisions by seeking relief in the writ petitions. That the benefit of input credit is under a statutory scheme and there can be no concession made for availing of the said benefit and all procedural restriction or limitations would have to be complied if an assessee has to avail the said benefit.

8. According to the appellants, the assesseees in the instant cases failed to file revised declarations in form TRAN-1 within the time prescribed under Section 140 read with Rule 117 and without adhering to the procedural requirements sought waiver of the same in the writ petitions. That the learned Single Judge could not have granted relief to the assesseees-respondents herein so as to avail the benefit of transitional credit beyond the time period or belated stage. Therefore, the learned Single Judge erred in directing the appellant authorities to accept the declaration forms beyond the statutorily prescribed time limit. It was contended that the right

to seek said relief was extensive since the assesseees did not file/revise TRAN-1 within the prescribed time. In this regard, it was contended that by exercising jurisdiction under Article 226 of the Constitution, learned Single Judge could not have bypassed the stipulations under Section 140 read with Rule 117 of the Rules so as to grant relief to the respondents-assesseees.

9. Learned counsel for the appellants further contended that there is no provision under Rule 117 to extend the time on equitable grounds and that the time period prescribed under Section 140 read with Rule 117 for filing of a declaration form for availing of transitional credit is within the time frame and in the writ petitions, learned Single Judge could not have granted the relief contrary to the said provision.

10. Elaborating said submissions, learned counsel for the appellants referred to Central Board of Excise and Customs (CBEC) Circular No.39/13/2018-GST dated 03.04.2018 which was issued specifically for addressing difficulties faced by the tax payers on account of technical glitches on the common portal including the cases pertaining to non-filing of TRAN-1 due to IT glitches and also Notification No.48/2018-GST dated 10.09.2018 which was issued under Section 164 of the Act by inserting Sub-rule (1A) to Rule 117 of the Rules, extending the

last date for submitting the declaration forms in certain cases only. The extension of time was for those persons who could not submit the declarations by the due date on account of technical difficulties on the common portal and in respect of whom GST Council had made a recommendation for such extension. Also Sub-rule(1A) of Rule 117 of the Rules was amended by Notification No.49/2019/Central Tax dated 09.10.2019 whereby the last date for submitting declaration electronically in Form TRAN-1 was further extended till 31.12.2019 only in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties in respect of whom GST Council had made a recommendation for such extension. Of course, it was also stated that such time had been extended from time to time and it is stated at the Bar that it was extended upto 31.08.2020.

11. However, provision for extension of time is not available generally to all the registered dealers and restricted to only those dealers who could not submit declaration in time on account of technical difficulties in the GST common portal and such benefit cannot be availed by those assesseees who had not filed TRAN-1 in time or on account of technical glitches at the assesseees end or for any other reasons, the benefit had not

been availed by the assesseees in time. Therefore, such assesseees could not have availed of the extended period of time to file their declaration forms. In other words, it was contended that in order to claim the benefit of extended period of time under Rule 117(1A) of the Rules, it was necessary that the dealer ought to have availed of the Income Tax Grievance Redressal mechanism under the Circular dated 03.04.2018, wherein, after due examination of the matter, the GST Council would have made recommendations for extension of time on the ground that the dealer in question could not upload his forms due to technical glitches on the GST common platform.

12. Elucidating on the expression 'technical difficulties', learned counsel for the appellant - Union of India submitted that the same has been considered and interpreted by the Division Bench of the Bombay High Court in the case of **Nelco Ltd. v. Union of India and Ors, [(2020) 81 GST 518 (Bombay)]**, (Nelco Ltd.) and the Bombay High Court rejected the contention of the assesseees therein that the said phrase could be interpreted in a broad and elaborate manner after taking into consideration the fact that lakhs of dealers had submitted their forms within the prescribed time period and therefore the learned Single Judge exercising jurisdiction under

Article 226 of the Constitution could not have granted the relief to the respondents/assesseees who had not uploaded the declaration forms within the prescribed time. Reliance was also placed on record on another judgment of the Bombay High Court in **JCB India Limited v. Union of India, (2018) 53 GSTR, 197** to contend that any transitional arrangement provided under the GST law cannot be continued endlessly or otherwise the object of the said law would be defeated. Reliance was also placed on **Ingersoll-Rand Technologies and Services Private Limited vs. Union of India, [(2020) 113 Taxmann.com 187 (Allahabad)], (Ingersoll-Rand Technologies)** to contend that the time limit prescribed under Rule 117 of the Rules was a mandatory one and the same could not have been extended by entertaining any belated revised declaration in Form TRAN-1.

13. It was also submitted that the Madras High Court in **P.R. Mani Electronics v. Union of India And Ors., [(2020) 80 GSTR 389 (Madras)], (P.R.Mani Electronics)**, had not concurred with the view of the Delhi High Court in **SKH Sheet Metals Components vs. Union Of India & Others, [2020 (38) GSTL 592 (Delhi)] (SKH Sheet Metal Components)**, and it held that the time period prescribed for filing of transitional

declaration forms under Rule 117 as mandatory and disregarding the same would render the provision unworkable.

14. Referring to another judgment of Delhi High Court in the case of ***Brand Equity Treaties Limited vs. The Union of India and Others, [(2020 (38) GSTL 10 (Del.))]***, (*Brand Equity Treaties Limited*) which has been stayed by the Hon'ble Supreme Court in SLP(C) Nos.7425-28 of 2020 (*Union Of India vs. Brand Equity Treaties Limited & others*) vide order dated 19.06.2020, it was contended that a responsible tax payer would have to be diligent in filing the TRAN-1 or filing revised TRAN-2 forms within the prescribed period as the said time period is mandatory in nature and non adherence to the same would result in waiver of the right claimed to transitional credit. Therefore, the learned Single Judge was not right in directing the appellants herein to accept the TRAN forms at a belated stage and the said direction is contrary to the object and purpose of Section 140 read with relevant Rules. It was contended by learned counsel for the appellants that the order passed by learned Single Judge may be set-aside and the writ petitions may be dismissed.

15. ***Per contra***, learned senior counsel Sri. G. Shivadass representing Sri. Prashanth Shivadass, learned

counsel Sri.V.Raghuraman, Sri.Atul K. Alur, Sri.Mallaha Rao and other counsel appearing for the respondent-assessee contended that the judgment of the learned single Judge would not call for any interference in these appeals. That the learned single Judge has taken note of Section 140 of the Act read with Rule 117 of the rules and the fact that sub-rule (1A) was inserted to Rule 117 by an amendment for the purpose of extending the time limit to file or revise the Tran-1 when it was found that such filing or revision was not possible because of technical glitches in the common portal. That the learned single Judge has been conscious of the fact that it would be a case of discrimination if only extension of time was granted on the ground of technical glitches on the common portal and not on any other ground. Learned single judge has appreciated the spirit behind the amendment made to Rule 117 by insertion of sub-rule (1A) and has given an expansive meaning to the said Rule. The object and purpose is to enable the assessee to take the benefit of the CENVAT credit if they had not done so in time.

16. In this regard, learned senior counsel as well as learned counsel for respondents-assessees placed reliance on *SKH Sheet Metal Components* which judgment has attained finality; ***Adfert Technologies Pvt. Limited vs. Union of***

India, [(2020 (32) G.S.T.L 726)(P & H)], (*Adfert Technologies*) wherein the special leave petition filed against the judgment has been dismissed by the Hon'ble Supreme Court; **Chogori India Retail Limited vs. Union of India, [2019(29) G.S.T.L 601 (DEL)],** (*Chogori India Retail*) where again the special leave petition has been dismissed by the Hon'ble Supreme Court and **Aagman Services Private Limited vs. Union of India, [(2019-TIOL-2682-HC-DEL-GST)],** (*Aagman Services*) where again the special leave petition has been dismissed by the Hon'ble Supreme Court. That there have been several other judgments rendered by different High Courts where the difficulty in filing or revising through GST TRAN-2 by the assesseees have been considered and directions have been issued to the Department to redress the grievance and also to permit the assesseees to file or revise GST TRAN-2 subsequent to the period prescribed under the Act and the Rules.

17. It was contended that learned single Judge fully appreciated the object and spirit of Rule 117 and the basis for insertion of the amendment in the form of Rule 117(1A) of the Rules and granted the relief to the respondent-assesseees which would not call for any interference in these appeals. It was

submitted that the learned single Judge appreciated the fact that the Central Government has the powers to pass orders in order to remove defects and the same is not only on the basis of hardship, but due to reasons such as the transition from the existing VAT regime to new GST regime which involved totally new procedures and compliances to be made by the assesseees. It is in that context that the expression "technical defects" should be understood. The same cannot be given a literal or pedantic interpretation but a broad, liberal interpretation so that the benefit of the amendment is applicable to a large number of assesseees as could be covered under the amendment. Any narrow or a myopic reading of the same would not in any way enhance the object and purpose of the amendment. Therefore, learned senior counsel and other counsel contended that the impugned order has rightly appreciated the fact that the assesseees, who have the benefit of the input credit, which is a substantial benefit that they have under the statute, must ultimately be tangible and reach the assesseees and the same cannot be withheld by the revenue on a narrow or literal interpretation of the expression 'technical defects'.

18. Learned senior counsel and other counsel appearing for the respondents submitted that there is no merit in these appeals and the same may be dismissed.

19. Learned Additional Government Advocate appearing for the State adopted the submissions of learned counsel for the appellant-Union of India and submitted that these appeals would have to be allowed by dismissing the writ petitions.

20. Learned Additional Government Advocate appearing for the appellant in W.A.No.556 of 2020 also submitted that this appeal assails order dated 17.12.2019 passed by the learned single Judge in Writ Petition No.52363 of 2019. The said writ petition was disposed by following the earlier order passed in Writ Petition No.33290 of 2019 and connected matters disposed of on 19.11.2019 which are the subject matter of connected appeals.

Points for consideration:

21. Having heard learned counsel for the respective parties and on perusal of the material on record, the following points would arise for our consideration:

- i) *Whether the order passed by the learned single Judge would call for any interference in these appeals?*

ii) What order?

22. The issue that arises in these appeals is with regard to the assessee, who are the writ petitioners, being permitted to carry forward input tax credit, allowing any balance in their credit account under the earlier regime by filing or revising the GST who had already filed, but beyond the time as specified under the provisions of Rule 117 of the Rules of 2017. It is well-settled that the assessee has a right to file input credit on goods procured at the time of filing of the returns as same would have been credited in the account of the respective assessee at the time of procurement of the goods. This right is according to the counsel for the respondents, analogous to an advance payment of tax. That under Section 140(1) of the Act for availing of the input tax credit under the erstwhile regime and for a transitioning under the new GST regime, certain conditions have to be fulfilled. They are as per Section 140 of the Act, extracted as under:

**"140. TRANSITIONAL ARRANGEMENTS
FOR INPUT TAX CREDIT. (1)** A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with

the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:--

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or
- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
- (iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government."

23. In the instant cases, the assesseees have complied with all these conditions. They also contended that under the GST regime, there is no provision relatable to lapsing of the credit as such. In other words, whatever benefit of credit input that could have taken under the earlier law could be availed of in a continuous process under the new regime. However, the bone of contention between the parties in these cases is with regard to the respondents-assesseees herein not filing their TRAN-1 or revised TRAN-1 within the period prescribed under

Rule 117 of the Rules. Whether, on account of the said fact they would be denied the benefit of credit input?

24. Rule 117 of the Rules speaks about tax or duty credit followed under existing law. Same 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 of eligible duties and taxes, as defined in Explanation 2 to section 140, to which he is entitled under the provisions of the said section:

Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days.

Provided further that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004.

(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond 31st December, 2019 in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.

(2) Every declaration under sub-rule (1) shall-

(a) in the case of a claim under sub-section (2) of Section 140, specify separately the following particulars in respect of every item of capital goods as on the appointed day-

(i) the amount of tax or duty availed or utilized by way of input tax credit under each of the existing laws till the appointed day; and

(ii) the amount of tax or duty yet to be availed or utilized by way of input tax credit under each of the existing laws till the appointed day;

(b) in the case of a claim under sub-section (3) or clause (b) of sub-section (4) or sub-section (6) or sub-section (8) of section 140, specify separately the details of stock held on the appointed day;

(c) in the case of a claim under sub-section (5) of section 140, furnish the following details, namely:—

- (i) the name of the supplier, serial number and date of issue of the invoice by the supplier or any document on the basis of which credit of input tax was admissible under the existing law;
- (ii) the description and value of the goods or services;
- (iii) the quantity in case of goods and the unit or unit quantity code thereof;
- (iv) the amount of eligible taxes and duties or, as the case may be, the value added tax [or entry tax] charged by the supplier in respect of the goods or services; and
- (v) the date on which the receipt of goods or services is entered in the books of account of the recipient.

(3) The amount of credit specified in the application in FORM GST TRAN-1 shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT- 2 on the common portal.

(4) (a) (i) A registered person who was not registered under the existing law shall, in accordance with the proviso to sub-section (3) of section 140, be allowed to avail of input tax credit on goods (on which the duty of central excise or, as the case may be, additional duties of customs under sub-section (1) of section 3

of the Customs Tariff Act, 1975, is leviable) held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty.

(ii) The input tax credit referred to in sub-clause (i) shall be allowed at the rate of sixty per cent. on such goods which attract central tax at the rate of nine per cent. or more and forty per cent for other goods of the central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid:

Provided that where integrated tax is paid on such goods, the amount of credit shall be allowed at the rate of thirty per cent. and twenty per cent. respectively of the said tax;

(iii) The scheme shall be available for six tax periods from the appointed date. (b) The credit of central tax shall be availed subject to satisfying the following conditions, namely:-

- (i) such goods were not unconditionally exempt from the whole of the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated in the said Schedule;
- (ii) the document for procurement of such goods is available with the registered person;
- (iii) The registered person availing of this scheme and having furnished the

details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in FORM GST TRAN 2 by 31st March 2018, or within such period as extended by the Commissioner, on the recommendations of the Council, for each of Page 115 of 155 the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period: Provided that the registered persons filing the declaration in FORM GST TRAN-1 in accordance with sub-rule (1A), may submit the statement in FORM GST TRAN-2 by 31st January, 2020;

- (iv) the amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the common portal; and
- (v) the stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person."

25. It is submitted at the Bar that by an amendment made to sub-rule (1A) of Rule 117, the period has been extended till 31.08.2020. Sub-rule (1A) was added to Rule 117 by an amendment by virtue of a Notification dated 10.09.2018. Thereafter, the said Rule has undergone two further amendments on 09.10.2019 and 31.12.2019. Rule 117(1A) 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) xxx

1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond "31st March, 2020" in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension."

Rule 120 deals with details of goods sent on approval basis and Rule 120A deals with revision of declaration in form GST TRAN-1 and the same read as under:

"120. Details of goods sent on approval basis.- Every person having sent goods on approval under the existing law and to whom sub-section (12) of section 142 applies shall, within (the period specified in rule 117 or such further period as extended by the commissioner), submit details of such goods sent on approval in FORM GST TRAN-1.

120A. REVISION OF DECLARATION IN FORM GST TRAN-1 - Every registered person who has submitted a declaration electronically

in FORM GST TRAN-1 within the time period specified in rule 117, rule 118, rule 119 and rule 120 may revise such declaration once and submit the revised declaration in FORM GST TRAN-1 electronically on the common portal within the time period specified in the said rules or such further period as may be extended by the Commissioner in this behalf."

26. At this stage, it would be useful to refer to some of the judicial precedent on the question under consideration, viz., as to whether the assessee could be allowed to carry forward input tax credit in their balance in earlier regimes by filing or revising GST TRAN-1 belatedly.

27. Learned counsel for the appellants referred to a Judgment of the Division Bench of Bombay High Court in *Nelco Ltd. vs. Union of India*, wherein the meaning of the phrase 'technical difficulty' under Rule 117(1A) and the role of the IT redressal cell and the exercise of discretion were, *inter alia*, considered. In that case, it was observed that Section 140, read with Rule 117, under Chapter 20 deals with transitional provisions for availment of CENVAT credit and by their very nature, transitional provisions have to be only for a limited period. It was observed that the time-limit prescribed therein

under Rule 117 was neither arbitrary nor violative of Article 14 of the Constitution. The procedure to be followed by the assesseees while submitting FORM TRAN-1 was considered and explained. It was also observed that due to technical difficulties in filing of TRAN-1 and bearing in mind Rule 117(1A), the Rule provided for the Commissioner, on the recommendations of the Council, to extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond 31.03.2019, in respect of registered persons who could not furnish the said declaration by the due date because of technical difficulties on the common portal and in respect of whom the GST Council had made recommendation for such extension. It was also noted that the further extension was 31.03.2020 and it was extended till 31.08.2020. The extension upto 31.03.2020 for submission of FORM GST TRAN-1 was to apply to those registered assesseees, who could not submit their declaration by the due date because of technical difficulties.

28. In the aforesaid case, the Division Bench of Bombay High Court considered the case of the petitioner therein and in respect of the technical difficulties they had and opined if there was no technical difficulties in the common portal for the

registered user, there was no purpose in granting any extension of time by way of a concession. In the said case, the petitioner therein had stated that he had technical difficulties in filing the TRAN-1 FORM and therefore, the delay ought to have been over-looked and the benefit of availment of the credit of input ought to have been given. But, the Division Bench found that there was no cogent proof of the existence of technical difficulties as seen from the system logs at the common portal and went on to uphold the *vires* of Rule 117 of the Rules. It was observed that the time-limit stipulated in Rule 117 of the Rules was in consonance with the transitional nature of the enactment, and it was neither arbitrary nor unreasonable.

29. It was further observed in the said case that the availment of input tax credit under Section 140(1) was a concession attached with conditions of its exercise within the time-limit and only exception was on account of technical difficulties on the common portal. That those registered persons who could not submit the declaration by the due date because of technical difficulties on the common portal which could be evidenced from the system logs, could be given an extension on the recommendation of the Council and not otherwise. In that case, it was observed that the petitioner

therein had no proof with regard to there being any technical difficulties on the common portal in filing TRAN-1 FORM and therefore, no direction was issued in his favour and ultimately, the petition was dismissed.

30. Before parting with *NELCO Ltd.*, it would be useful to extract Paragraph 61 of the judgment, wherein the procedure that is to be followed by the tax payer for the purpose of filing TRAN-1 or revised TRAN-1 FORM has been stated and it reads as under:

"61. Now we turn to the third aspect of the matter that is the meaning of the phrase 'technical difficulties' under Rule 117A and the role of the IT Redressal Cell and whether by creating categories discretion is being fettered; To appreciate the Petitioners' challenge, the procedure to be followed while submitting Form TRAN-1 needs to be narrated. The Respondents have placed on record the procedure, which is: First, the taxpayer has to log in to the GST Portal. Then navigate to the TRAN-1 Form in Services Section. If the TRAN-1 is already submitted or filed, then a Reopen button is provided to the taxpayer to modify previously submitted/filed data or for adding missing records. Once the taxpayer clicks on the Reopen button, then the status of TRAN-1 is changed to Reopen. The

taxpayer then fills up the respective sections of the TRAN-1 Form and then enters details under various tables such as Table 5A, 5B, 7A, 8 etc. The taxpayer then saves TRAN-1 and verifies the entered values. After that, the TRAN-1 is submitted on GST Portal. After its submission, TRAN-1 credit is calculated based on the values in the form and entries are made to the Electronic Input Tax Credit (ITC) ledger. Then the taxpayer is required to authenticate TRAN-1 by attaching digital signature using and file TRAN-1 Form. Then the filing process is complete. Thereafter the entries of the amount being posted in the Electronic ITC Ledger can set off liabilities in GSTR-3B. The credit of TRAN-1 is credited and posted in ledgers for use to set off liabilities when the taxpayer "submits" TRAN-1 Form. This is the method followed by the taxpayer."

31. Reliance has also been placed by the appellants on ***P.R.Mani Electronics vs. Union of India and Others, [(2020(39) GST(L) 3)]***, (*P.R.Mani*), which is a judgment of the Division Bench of the Madras High Court which considered Section 140 of the Act as well as Rule 117 of the Rules. After noting that the validity of Section 140 and Rule 117 under the Act had been upheld by several High Courts, it was observed that input tax credit being a concession and not a vested right has to be availed within the time-limit if benefit is to accrue.

That the time-limit prescribed for filing of TRAN-1 or revised TRAN-1 FORM was to be construed as a mandatory requirement and not being directory. That if it was construed to be directory, it would adversely impact the Government revenue interest. Hence, it was held that the time-line prescribed under Rule 117 in filing the return in FORM GST TRAN-1 could not be extended as such and on that basis, the writ petition was dismissed.

32. *Per contra*, learned senior counsel and learned counsel for the respondents-assesseees relied upon the following two judgments in support of their contentions, viz., *Adfert Technologies* and *SKH Sheet Metals Components*.

In the first of the above cases, the question considered was, whether, in exercise of jurisdiction under Article 226 of the Constitution, the assesseees could be permitted to carry forward unutilised CENVAT credit of duty paid under the Central Excise Act, 1944 and Input Tax Credit (ITC) of VAT paid under the relevant Act which could not be carry forwarded on account of non-filing or incorrect provisions of statutory form, i.e., TRAN-1 by the stipulated last date, i.e., 27.12.2017, as it then was. In that case, after considering Section 140 of the Act, reference was made to Section 142 which deals with miscellaneous

transitional provision. The relevant portions of the said judgment reads as under:

" 10.a Division Bench of Gujarat High Court in the case of *Siddharth Enterprises Vs The Nodal Officer, [2019-TIOL-2068-HC-AHM-GST = 2019 (29) G.S.T.L. 664 (Guj.)]* has dealt with issue involved at length. It has been held that denial of credit of tax/duty paid under existing Acts would amount to violation of Article 14 and 300A of Constitution of India. Unutilized credit has been recognized as vested right and property in terms of Article 300A of the Constitution of India. We deem it appropriate to reproduce relevant extracts as below:

" 33. In our opinion, it is arbitrary, irrational and unreasonable to discriminate in terms of the time-limit to allow the availment of the input tax credit with respect to the purchase of goods and services made in the pre-GST regime and post-GST regime and, therefore, it is violative of Article 14 of the Constitution.

34. Section 16 of the CGST Act allows the entitlement to take input tax credit in respect of the post-GST purchase of goods or services within return to be filed under Section 39 for the month of September following the end of financial year to such purchase or furnishing of the relevant annual return, whichever is earlier. Whereas, Rule 117 allows time-limit only up to 27th December, 2017 to claim transitional credit on pre-GST purchases. Therefore, it is arbitrary

and unreasonable to discriminate in terms of the time-limit to allow the availment of the input tax credit with respect to the purchase of goods and services made in pre-GST regime and post-GST regime. This discrimination does not have any rationale and, therefore, it is violative of Article 14 of the Constitution."

X X X

11. Delhi High Court in a series of cases has expressed similar view as by Gujarat High Court. In its recent judgment in the case of *Krish Automotors Pvt. Ltd. Vs UOI and others*, 2019-TIOL-2153-HC-DEL-GST= 2019 (29) G.S.T.L. 584 (Del.)), Delhi High Court has noted its various previous orders and directed as under:

"11. Accordingly, a direction is issued to the Respondents to permit the Petitioner to either submit the TRAN-1 form electronically by opening the electronic portal for that purpose or allow the Petitioner to tender said form manually on or before 15th October, 2019 and thereafter, process the Petitioner's claim for ITC in accordance with law. The petition is disposed of in the above terms."

12. We fully agree with findings of Hon'ble Gujarat and Delhi High Court noticed hereinabove and find no reason to take any contrary view. We are not in agreement with the cited judgment by the Revenue of Hon'ble Gujarat High Court in Willowood Chemicals case (Supra) as the Gujarat High Court itself in subsequent judgments and Delhi High Court in

a number of judgments (as noticed hereinabove) have permitted petitioners (therein) to file TRAN-I Forms even after 27.12.2017. We also find that the Sub Rule (1A) added/inserted to Rule 117 w.e.f. 10.09.2018 has not been noticed in the said cited judgment by the Revenue, which goes to the roots of findings recorded by the Hon'ble Gujarat High Court. Thus, all the petitions deserve to succeed and are hereby allowed.

13. Accordingly, we direct Respondents to permit the Petitioners to file or revise where already filed incorrect TRAN-1 either electronically or manually statutory Form(s) TRAN-1 on or before 30th November 2019. The Respondents are at liberty to verify genuineness of claim of Petitioners but nobody shall be denied to carry forward legitimate claim of CENVAT / ITC on the ground of non-filing of TRAN-I by 27.12.2017."

33. Section 16 deals with eligibility and conditions for taking input tax credit and ultimately, Rule 117 and Rule 120-A of the Rules referred to above apply. In that case, one of the contentions raised was that if the assessee was not allowed the right to carry forward the CENVAT credit for not being able to file GST TRAN-1 FORM in the prescribed route, it would adversely affect on the working capital and diminish their right

to carry on the business and as a result, Article 19(1)(g) of the Constitution would be affected. The said judgment has noticed the decisions of the other High Courts in ***Willowood Chemicals (Pvt.) Ltd. vs. Union of India, [(2018) 98 Taxmann.Com 100 (Gujarat)]***, (*Willowood Chemicals*) and judgments of the Delhi High Court which had permitted the petitioners therein to file TRAN-1 forms even after 27.12.2019 and also the fact that subsequently, there was insertion of sub-rule (1A) to Rule 117 with effect from 10.09.2018. Therefore, the assessees therein were permitted to file revised TRAN-1 who had already filed incorrect TRAN-1 electronically or manually on or before 31.12.2019 and the Revenue was at liberty to verify genuineness state of the petitioners.

34. In *SKH Sheet Metal Components*, a discussion on the GST system and its procedural short comings was made and thereafter, a reference was made to another judgment of the Delhi High Court in *Brand Equity Treaties Limited*, by observing that neither the Act nor the Government had prescribed any meaning to the words "technical difficulties to the common portal" and therefore, it could not be given very restricted meaning. The relevant paragraph Nos.18 and 19 of the said Judgment reads as under:

"18. In above noted circumstances, the arbitrary classification, introduced by way of sub Rule (1A), restricting the benefit only to taxpayers whose cases are covered by "technical difficulties on common portal" subject to recommendations of the GST Council, is arbitrary, vague and unreasonable. What does the phrase "technical difficulty on the common portal" imply? There is no definition to this concept and the respondent seems to contend that it should be restricted only to "technical glitches on the common portal". We, however, do not concur with this understanding. "Technical difficulty" is too broad a term and cannot have a narrow interpretation, or application. Further, technical difficulties cannot be restricted only to a difficulty faced by or on the part of the respondent. It would include within its purview any such technical difficulties faced by the taxpayers as well, which could also be a result of the respondents follies. After all, a completely new system of accounting; reporting of turnover; claiming credit of prepaid taxes; and, payment of taxes was introduced with the implementation of the GST regime. A basket of Central and State taxes were merged into a single tax. New forms were introduced and, as aforesaid, all of them were not even operationalised. Just like the respondents, even the taxpayers required time to adapt to the new systems, which was introduced as a completely online system. Apart from the shortcomings in the system developed by GSTN Ltd., the assessee also faced the challenges posed by low bandwidth and lack of computer knowledge and

skill to operate the system. It is very unfair on the part of the respondents, in these circumstances, to expect that the taxpayers should have been fully geared to deal with the new system on day-one, when they themselves were completely ill-prepared, which led to creation of a complete mess. The respondents cannot adopt different standards –one for themselves, and another for the taxpayers. The GST regime heralded the system of seamless input tax credits. The successful migration to the new system was a formidable and unprecedented task. The fractures in the system, after its launch, became visible as taxpayers started logging in closer to the deadline. They encountered trouble filing the returns. Petitioners who are large and mega corporations -despite the aid of experts in the field, could not collate the humongous data required for submission of the statutory forms. Courts cannot be oblivious to the fact that a large population of this country does not have access to the Internet and the filing of TRAN-1 was entirely shifted to electronic means. The Nodal Officers often reach to the conclusion that there is no technical glitch as per their GST system laws, as there is no information stored/logged that would indicate that the taxpayers attempted to save/submit the filing of Form GST TRAN-1. Thus, the phrase “technical difficulty” is being given a restrictive meaning which is supplied by the GST system logs. Conscious of the circumstances that are prevailing, we feel that taxpayers cannot be robbed of their valuable rights on an unreasonable and unfounded basis of them not having filed TRAN-1 Form within 90 days, when civil rights can be enforced within a period of three years from the

date of commencement of limitation under the Limitation Act, 1963.

19. The introduction of Sub rule (1A) in Rule 117 is a patchwork solution that does not recognise the entirety of the situation. It sneaks in an exception, without addressing situations taken note of by us. This exception, as worded, is an artificial construction of technical difficulties, limiting it to those existing on the common portal. It is unfair to create this distinction and restrict it to technical snags alone. In our view, there could be various different types of technical difficulties occurring on the common portal which may not be solely on account of the failure to upload the form. The access to the GST portal could be hindered for myriad reasons, sometimes not resulting in the creation of a GST log-in record. Further, the difficulties may also be offline, as a result of several other restrictive factors. It would be an erroneous approach to attach undue importance to the concept of "technical glitch" only to that which occurs on the GST Common portal, as a pre-condition, for an assessee/tax payer to be granted the benefit of Sub-Rule (1A) of Rule 117. The purpose for which Sub-Rule (1A) to Rule 117 has been introduced has to be understood in the right perspective by focusing on the purpose which it is intended to serve. The purpose was to save and protect the rights of taxpayers to avail of the CENVAT credit lying in their account. That objective should also serve other taxpayers, such as the petitioners. The approach of the Government should be fair and reasonable. It cannot be arbitrary or discriminatory, if it

has to pass the muster of Article 14 of the Constitution. The government cannot turn a blind eye, as if there were no errors on the GSTN portal. It cannot adopt different yardsticks while evaluating the conduct of the taxpayers, and its own conduct, acts and omissions. The extremely narrow interpretation that the respondents seek to advance, of the concept of "technical difficulties", in order to avail the benefit of Sub - Rule (1A), is contrary to the statutory mechanism built in the transitory provisions of the CGST Act. The legislature has recognized such existing rights and has protected the same by allowing migration thereof in the new regime under the aforesaid provision. In order to avail the benefit, no restriction has been put under any provisions of the Act in terms of the time period for transition. The time - limit prescribed for availing the input tax credit with respect to the purchase of goods and services made in the pre-GST regime, cannot be discriminatory and unreasonable. There has to be a rationale forthcoming and, in absence thereof, it would be violative of Article 14 of the Constitution. Further, we are also of the view that the CENVAT credit which stood accrued and vested is the property of the assessee, and is a constitutional right under Article 300A of the Constitution. The same cannot be taken away merely by way of delegated legislation by framing rules, without there being any overarching provision in the GST Act. We have, in our judgment in A.B. Pal Electricals (supra) emphasized that the credit standing in favour of the assessee is a vested property right under Article

300A of the Constitution and cannot be taken away by prescribing a time-limit for availing the same."

In *SKH Sheet Metals Components*, it has been further held as under:

"25. Now, when we examine the timelines framed by the Central Government, we must remain focused on the importance of the afore-noted provisions, in relation to the object that is intended to be achieved. At the same time, we also have to examine the consequences that would follow if we construe a provision to be directory and not mandatory. The purpose of the timelines prescribed is just to hasten the migration of taxes from the erstwhile regime to the new GST laws and for swift streamlining of the ITC. The timeline introduced by Rule 117 is purely procedural and as discussed above the same was not treated as sacrosanct. The Central Government has continuously extended the same, by carving out an exception under Rule 117 (1A). Moreover, under none of the provisions of the Act, we can infer the intention of the legislature to create this distinction by way of subordinate legislation. We also cannot decipher any intent to deny extension of time to deserving cases where delay in filing was on account of human error. This interpretation would run counter to the object sought to be achieved under Section 140 of the Act, which is the governing provision and exhibits the true legislative intent. The situation before us is not where the statute fixes any timelines for transitioning of credit. After the retrospective amendment of Section

140, we can interpret that the power to fix the timeline and its extension has been prescribed to the Central Government which was done vide Rule 117. This Rule provides for a time period of 90 days and also stipulates that the same can be extended for a further period *not exceeding 90 days*. However, under Rule 117 (1A), multiple extensions beyond 180 days have been granted for taxpayers who faced "technical difficulties on common portal". Yet, deserving 'non-technical' cases like the present one have been ignored and this exclusion is arbitrary and irrational. Moreover, if we were to look for a provision in the statute that would stipulate a consequence for failure to adhere to the timelines, we would find none. Rule 117 of the CGST rules also does not indicate any consequence for non-compliance of the condition. Both the Act and Rules do not provide any specific consequence on failure to adhere to the timelines. Since the consequences or non-consequence are not indicated, the provision has to be seen as directory. Pertinently, non-observance of the timelines would prejudice only one party- the registered person/taxpayer. If we interpret the timelines to be mandatory, the failure to fulfill the obligation of filing TRAN-1 within the stipulated period, would seriously prejudice the taxpayers, for whose benefit section 140 has been provided by the legislature. In view of the above discussion, interpreting the procedural timelines to be mandatory would run counter to the intention of the legislature and defeat the purpose for which the

transitory provisions have been provided and have to be construed as directory and not mandatory."

35. After referring to the above, a Co-ordinate Bench of the Delhi High Court [in *SKH Sheet Metals (supra)*] held, despite the judgment in *Brand Equity Treaties Limited* being stayed by the Supreme Court, the aforesaid reasoning still holds good. In addition, it was also observed that Rule 117(1A) suffers from the vice of vagueness as the expression "technical difficulties on the common portal" and its applicability had not been adequately defined nor its parameters asserted. As a result, there was no certainty or predictability about the application of this Rule for the class of cases to which it would apply. Further, in the absence of there being defined criteria, the application of the said provision would suffer from arbitrariness. It was also noted that the GST Council itself had found that there can be certain errors apparent on the face of the record and that could be non-technical in nature which would predicate leniency in the matter.

36. We find that the aforesaid reasoning of the Delhi High Court is, keeping in mind the fact that the entire country was in a transitional mode insofar as the new regime of GST being implemented with effect from 01.07.2017. It would be relevant

to note that in each State earlier, there were independent and separate Sales Tax Regime in the form of VAT (Value Added Tax) Act. Although, there were different enactments in various States of the country, there was an over-all pattern, which emerged inasmuch as there were several similarities that could be found under various VAT enactments of the respective States. But, the Parliament thought it fit that the entire country must be covered under a single tax regime and by amendment made to the Constitution by insertion of Article 246-A and by exercising power under Article 249, brought under one umbrella in the form of the Goods and Service Tax Act, not only the indirect taxation regime under the various State VAT Acts but also the Central Sales Tax, Central Excise and Service Tax in the form of a single Code.

37. The grievance of the respondent-assesseees must be viewed in the above historical perspective, wherein, the assesseees had to transit from the earlier tax regime under State/Central enactments to the new tax regime, in the form of Goods and Service Tax Act. It is in the above context that while providing the benefit of input tax credit which had accrued under the erstwhile regime and which could be availed

under the Act could be done so by following procedure as envisaged in Section 140(1) of the Act.

38. As already noted, there should be certainty and a time-prescription within which the transition could be made. But, it is also noted that the initial time-frame prescribed, being 27.12.2017, had to be extended from time to time by virtue of the amendments made and ultimately, sub-rule (1A) to Rule 117 was inserted. The said Rule incorporates the expression "technical difficulties on the common portal". The Rule does not define as to what is a technical difficulty on the common portal. The reason for not defining the same is because the rule making authority was conscious of the fact that there could be a variety of technical difficulties on the common portal which could not be explained under the Rule or envisaged by the Rule making Authority. The said technical difficulty on the common portal could arise due to human errors or on account of a systemic difficulty due to the use of an electronic device, which is a mechanical device, being used for evaluating TRAN-1. Therefore, consciously, the rule making authority has not defined the expression "technical difficulty on common portal".

39. In the absence of such a definition being given under the Rule, question is, whether, the same would have to be

viewed in a myopic or narrow, pedantic way or to give a liberal interpretation to the said expression so that all reasons which would come in the way of uploading Form TRAN-1 or Revised Form TRAN-1, could be considered within the scope and ambit of the expression "technical difficulty of common portal". No doubt, it is the policy of the Central Government that there should be digitalization, as far as possible, even with regard to simple transactions, such as buying of household articles and including other complex transactions, such as entering into various types of agreements concerning infrastructure development projects. But, the reality is that the Indian society is not yet so well-versed and adept at utilising online methods, whether it is a simple transaction, or for the purpose of filings, etc., under the taxation enactments. Moreover, all the assesseees under the respective enactments cannot be categorized or clubbed as one class of assesseees, as that is far from reality. There are various categories such as, small-scale businesses, large-scale businesses and medium-scale industries, each one of whom may have their own challenges to meet, not only in their day-to-day carrying on of their businesses, but also while complying with the requirements under the Act and the Rules in question, especially when transitional requirements have to be complied with so as to

enable a smooth continuity as well as a change from the old taxation regime into the new one. Therefore, the Rule making authority has intentionally and consciously not defined what is "technical difficulty in the common portal". It is in the above context that the case of the assesseees must be considered.

40. Learned counsel for appellants relied upon certain decisions to contend that the benefit of CENVAT credit is by way of a concession and hence, could be availed only after fulfilling certain conditions. That in *Willowood Chemicals*, it has been held that there is no vested right which could have been taken away by Section 140 of the Act. That when the tax structure of the entire country is under a transition to a new regime, claims for CENVAT credit must attain its finality and within the prescribed time limit. Therefore, there cannot be any extension of time for assesseees who have not availed of the benefit of CENVAT credit in terms of Section 140 and the Rules made thereunder. That it is of utmost importance that the time-line prescribed under Section 140(1) of the Act is complied with so as to carry forward the concession in the form of CENVAT credit to the new regime, otherwise, the entire transition would be unworkable, vide *NELCO Ltd.*

41. In this regard, reliance was placed on *Ingersoll-Rand Technologies*, wherein it was held that in a transitional provision, the arrangement for such a transition i.e., to avail the benefit of accumulated credit and for this purpose the time period for filing of GST TRAN-1 or GST TRAN-2 cannot be extended indefinitely as it will defeat the purpose of its transitional provisions as well as the legislative intent behind it.

42. It was contended that in *Willowood Chemicals* and in *Nelco Ltd.*, the Bombay High Court while upholding Rule 117 of the Rules as being not *ultra vires* also observed that the case of the petitioners therein could not be considered in terms of the scope and ambit of Rule 117(1A) of the Rules.

43. Similarly, in *Ingersoll-Rand Technologies & Services (P.) Ltd. vs. Union of India*, no relief was granted to the petitioner therein.

44. But, it is significant to note that the judgment in *Adfert Technologies*, has been sustained by the Hon'ble Supreme Court by its order dated 28.02.2020 on the facts and circumstances of the said case. Since the Hon'ble Supreme Court has not interfered in the judgment in *Adfert Technologies*, we are persuaded to apply the same in the instant case.

45. Of course, in the judgments cited by the appellants, the *vires* of the Rule was challenged along with Section 140 of the Act. The focus of those judgments are on the consideration of *vires* and upholding of the same and in that context, ultimately, the Bombay High Court and the Madras High Court did not grant any relief to the assesseees therein.

46. But, in these cases, the respondent-assesseees have not assailed the *vires* of Section 140 of the Act or Rule 117(1A) of the Rules. On the other hand, their plea is to give a liberal content and meaning to the said expression "technical difficulty on common portal" in order to ultimately grant relief to them which they are not seeking by way of a concession or a departure to be made by the Revenue, but on the other hand, what would have been their right had they continued in the earlier tax regime. Such a difficulty would not have been envisaged at all if the erstwhile tax regime had been continued. The difficulty of the assesseees must be appreciated in the background of the fact that they would have to adjust, of course, as early as possible, under the umbrella of the new tax regime. But, while doing so, the glitches which have to occur either on account of the electrical devices which have to be

used or on account of the man-made lapses, would have to be both taken into consideration.

47. It has been urged on behalf of the respondents-assesseees that in these cases, the respondents-assesseees admitted to have uploaded the FORM TRAN-1 or revised TRAN-1, but on account of technical glitches, the said exercise did not get fulfilled. On the other hand, it is also not the case of the Revenue that these assesseees slept over the matter and never made any attempt to upload TRAN-1 or revised TRAN-1 and therefore, they ignored the time prescribed under the Rules. It is also the further case of respondents-assesseees that on account of technical glitches on the common portal, there has been a delay in uploading of TRAN-1 or revised TRAN-1. That is why we are emphasizing the fact that it is not the case of the Revenue that these assesseees never attempted to upload TRAN-1 or revised TRAN-1 and they straight away sought relief under Article 226 of the Constitution of India for being granted an opportunity to do so.

48. Insofar as these assesseees are concerned, in most of the cases, they have approached the Nodal Officer for being given an opportunity to upload Form TRAN-1 or revised Form TRAN-1. In some cases, their requests were accepted, but in

certain cases, they were not. Ultimately, they approached this Court under Article 226 of the Constitution so that they would be on a firm ground and ultimately be able to avail the benefit of CENVAT credit that had accrued to them under the erstwhile regime while transiting to the new regime under the Act.

49. In this context, it would also be useful to place reliance on the judgments relied upon by the learned single Judge in the case of *Adfert Technologies* and *Willowood Chemicals (supra)* wherein the Punjab and Haryana High Court considered the case of the assesseees who had filed the writ petitions under Article 226 of the Constitution permitting them to carry forward unutilised CENVAT credit of duty paid under Central Excise Act, 1944 as well as the Input Tax Credit under VAT Act of the respective States. The said decision referred to above has been relied upon by the learned single Judge.

50. Learned single Judge has also placed reliance on ***Krish Automotors Pvt. Ltd. Vs. Union of India, [(2019(29) G.S.T.L 584 (Del.))]*** and has ultimately granted the very relief that was granted by the Punjab and Haryana High Court in *Adfert Technologies (supra)* by prescribing the timeframe within which the assesseees could have filed, either electronically or manual statutory forms on or before

31.12.2019. Further, the respondents have given the liberty to verify the genuineness of the merits of the case in accordance with law.

51. We have adverted to the background and the historical perspective and the manner in which Rule 117 of the Rules was worded initially and as to how with the passage of time, subsequent to 27.12.2017, amendments were made to the said Rule by extending the time for the purpose of submitting the declaration electronically in Form GST TRAN-1. Ultimately, insertion of sub-rule (1A) to Rule 117 with effect from 10.09.2018 was effected. Even thereafter, the sub-rule was amended not once, but thrice so as to extend the time from 31.03.2019 to 31.03.2020 and ultimately, it was extended to 31.08.2020. The last extension upto 31.08.2020 was in exercise of the powers conferred under Section 168A of the Act by insertion of Section 117(1A) of the Act by way of an amendment. This was on the recommendation of the GST Council whereby, earlier Notification No.35/2020-CT dated 03.04.2020 was amended. This was done by extending the time period granted upto 30.06.2020 by the Notification dated 03.04.2020 issued in the interregnum. In this context, it would

be useful to refer to Section 172 of the Act, which reads as under:

"Removal of difficulties.

172. (1) If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

PROVIDED that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament."

52. Therefore, on a careful consideration of the judgments cited by the learned senior counsel and learned counsel for respondents in light of the order impugned, we find that the learned single Judge has been persuaded by the judgment passed in *Adfert Technologies* in coming to the conclusion that the assessee herein must be granted relief by giving them another opportunity to file/revise TRAN-1 either electronically or manually on or before 31.12.2020. We find

that the reasoning of the learned single Judge and the relief granted would not call for any interference except to the extent of extending the time within which they would now have to file TRAN-1. The said time-frame has now expired even after successive extensions on 30.08.2020. Therefore, the respondents-assesseees are permitted to file/revise TRAN-1 either electronically or manually on or before 31.03.2021. The revenue is at liberty to verify the genuineness or the merits of the claim in accordance with law.

53. Insofar as Writ Appeal No.56 of 2020 is concerned, learned counsel, Sri.Jeevan J.Neeralagi, submitted that in this case, the respondent-assessee filed GST TRAN-1 on 16.09.2017 and revised GST TRAN-1 on 29.01.2017, which was the last date for filing of the same. Either in the initial filing or in the revised filing, the respondent-assessee did not avail of CENVAT credit for the period from April 2016 to June 2017. Hence, they preferred Writ Petition No.26410 of 2019 (T-RES) and have now been granted the benefit of the learned single Judge's order.

54. Learned counsel, Sri.Jeevan J.Neeralagi submitted, this case is not a case where there was belated filing of TRAN-1 or revised TRAN-1, but a case where the said filings took place

in time, but without adverting to the CENVAT credit facilities at all. In the circumstances, no fresh opportunity can be given to the respondent to once again file TRAN-1 returns. That in this case, the question of there being any technical difficulty on the common portal does not arise at all and therefore, learned single Judge ought to have dismissed the writ petition.

55. Insofar as Writ Appeal No.56 of 2020 is concerned, we do not find that the said case could be considered independent of the other cases. The relief granted by the learned single Judge to the respondent-assessee in that case is similar to the one granted to the assesseees in the said cases also. This is because the object and purpose is to give the benefit of CENVAT credit earned under the erstwhile tax regime.

56. Hence, we find no reason to interfere with the order of the learned single Judge and hence, Writ Appeal No.56 of 2020 and Writ Appeal Nos.18, 104, 105, 19, 206, 207, 208, 209, 210, 23, 27, 294, 38, 51, 56, 75, 292, 293, 295, 296, 298 and 556 of 2020 stand **dismissed**.

Parties to bear their respective costs.

In view of dismissal of the appeals, all pending applications stand disposed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

MN/BNV