

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 15631 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J.B.PARDIWALA****Sd/-****and****HONOURABLE MR. JUSTICE ILESH J. VORA****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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JIGAR CARS PVT. LTD.  
Versus  
UNION OF INDIA

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**Appearance:****MR UCHIT N SHETH, ADVOCATE for the Petitioner(s) No. 1,2****MR ANKIT SHAH, ADVOCATE for the Respondent(s) No. 1,2****NOTICE SERVED BY DS(5) for the Respondent(s) No. 3****CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA****and****HONOURABLE MR. JUSTICE ILESH J. VORA****Date : 23/03/2021****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1. By this writ-application, under Article 226 of the Constitution of India, the writ-applicants have prayed for the following reliefs :

*“(A) This Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or order directing the respondents to forthwith positively act upon the representations of the petitioners and allow rectification of Form GST TRAN-2 filed for the month of July 2017 and in any case allow the petitioners to file returns in Form GST TRAN-2 and claim transitional credit for supplies made in the months of August 2017 to December 2017;*

*(B) Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to direct the respondents to forthwith positively act upon the representations of the petitioners and allow rectification of Form GST TRAN-2 filed for the month of July 2017 and in any case allow the petitioners to file returns in Form GST TRAN-2 and claim transitional credit for supplies made in the months of August 2017 to December 2017;*

*(C) Ex-parte ad-interim relief in terms of prayer-B may kindly be granted;*

*(D) Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness petitioners shall forevery pray.”*

2. The case put up by the writ-applicants may be summarised as under :

3. The writ-applicants are engaged in the business of distribution of Maruti cars as well as spare parts and accessories. Since the writ-applicants were not engaged in any manufacturing activity, they were not holding registration under the Central Excise Act, 1944 (hereinafter referred to as “the Excise Act”). However, the goods sold by the writ-applicants were laden with excise duty as charged and paid by the manufacturers.

4. Section 140(3) of the Central Goods and Services Tax Act, 2017 (herein after referred to as “the GST Act”) allowed transitional tax credit for the goods in stock as on 30.6.2017. If the duty paying document in respect of the goods in stock was available, then the input tax credit of such duty could be claimed in Form GST TRAN-1. However, if the duty paying document was not available, then the proviso to Section 140(3) of the GST Act allowed claiming of deemed credit at the prescribed percentage points by filing the Form GST TRAN-2 for a maximum period of 6 months. The writ-applicants were entitled to claim deemed transitional tax credit under the proviso to Section 140(3) of the GST Act. For such purpose, they were first required to declare the duty paid stock in the Form GST TRAN-1 within the stipulated time limit. It is not in dispute that the writ-applicants duly filed the Form GST TRAN-1 within the available time limit. However, for the purpose of availing deemed credit, a further Form GST TRAN-2 was to be filed for a maximum period of 6 months from July 2017 to December 2017. While filing the Form GST TRAN-2 for the month of July 2017 with correct value of the output supply and also the correct amount of the CGST paid, a typographical error crept in. The writ-applicants inadvertently

mentioned the entire quantity of stock on hand as on 1.7.2017 in the column of supplied quantity even though, factually, as also as per the books of accounts, only part quantity was supplied in the said month. As a result of this, the closing stock of the goods as on 1.7.2017 was shown as zero in the said Form for the month of July 2017. Since the closing stock was erroneously shown as zero in the month of July 2017 and the opening stock in the Form GST TRAN-2 for the subsequent months was auto populated on the GST portal, the writ-applicants were not allowed to file the Form GST TRAN-2 and claim deemed transitional tax credit for the months from August 2017 onwards. The writ-applicants approached the authorities on number of occasions requesting to allow the rectification of the Form GST TRAN-2 for the month of July 2017 as it was an inadvertent typographical error because of which they were unable to file the Form GST TRAN-2 for the subsequent months. Since the respondents did not give any positive response to the grievance of the writ-applicants, the present writ-application has been filed before this Court.

5. We have heard Mr.Uchit Sheth, the learned counsel appearing for the writ-applicants, and Mr.Ankit Shah, the learned standing counsel appearing for the respondents.

6. The controversy in the case on hand is squarely covered by a judgment of this Court in the case of Jakap Metind Pvt. Ltd. vs. Union of India and others (Special Civil Application No.19951 of 2018, decided on 4<sup>th</sup> October 2019), wherein it was held and observed this Court as under :

*“23. In this case, it is not as if the petitioner has not filed Form GST TRAN-1 within the time provided by the respondents under the rules. The petitioner had filed the form, but on account of not properly understanding the nature of the columns provided in the form, due to inadvertent error, did not mention the details of Rs.83,99,136/- in column 6 of Table 5a and instead uploaded the details in column 5 of Table 5a in Form GST TRAN-1. Now the substantive right of the petitioner to claim transitional credit of such amount is sought to be denied on the ground that the time limit for filing revised Form GST TRAN-1 has elapsed.*

*24. In the opinion of this court, as held by the Delhi High Court in M/s. Blue Bird Pure Pvt. Ltd. vs. Union of India (supra), the respondents ought to have provided in the system itself a facility for rectification of such errors which are clearly bona fide. Besides, although the system provided for revision of a return, the deadline for making the revision coincided with the last date for filing the return, that is, 27<sup>th</sup> December 2017. Thus, such facility was rendered impractical and meaningless.*

*25. This court is further of the view that retention of the amount of Rs.83,99,136/- by the respondents which the petitioner is otherwise entitled to get by way of transitional credit would be directly hit by Article 265 of the Constitution of India which provides that no tax shall be levied or*



*collected except by authority of law. The respondents have no legal authority to retain the amount of credit to which the petitioner is duly entitled and retention of the same is violative of article 265 of the Constitution of India. Therefore, when the petitioner is entitled to credit of Rs.83,99,136/-, non grant of the same is bad in law.”*

7. The operative portion of the aforementioned judgment reads as under:

*“27. The petition, therefore, succeeds and is accordingly, allowed. The respondents are directed to either open the online portal so as to enable the petitioner to again file the rectified Form GST TRAN-1 electronically or accept the manually filed Form GST TRAN-1 with corrections on or before 30th November 2019.”*

8. Mr.Sheth is right in submitting that the writ-applicants cannot be made to lose the benefit of deemed transitional tax credit from August 2017 onwards only on account of an inadvertent and *bonafide* typographical error made in the Form GST TRAN-2 for the month of July 2017.

9. The judgment of this Court, referred to above in the case of Jakap Metind Pvt. Ltd. (supra), is in the context of an inadvertent error in the Form GST TRAN-1. However, the ratio should apply even in the case on hand.

10. In the result, this writ-application succeeds and is hereby allowed. The respondents are directed to either open an online portal so as to enable the writ-applicants to again file a rectified Form GST TRAN-2 electronically, for the month of July 2017 as well as the Form GST TRAN-2 for the subsequent months from August to December 2017, or accept the manually filed the Form GST TRAN-2 for all the months with necessary corrections.

11. The respondents are further directed not to raise any objection of time limit in filing the Form GST TRAN-2 for the months from August 2017 to December 2017 as the portal did not allow the writ-applicants to file such forms because of a *bonafide* error in the form filed for the month of July 2017.

12. With the aforesaid, the writ-application is disposed of.

(J. B. PARDIWALA, J.)

(ILESH J. VORA, J.)

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THE HIGH COURT  
OF GUJARAT

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