* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 02.03.2020
Pronounced on: 05.05.2020

\+ **W.P.(C) 11040/2018 and C.M. No. 42982/2018**

BRAND EQUITY TREATIES LIMITED ..... Petitioner

Through: Mr. Abhishek A. Rastogi, Advocate.

versus

THE UNION OF INDIA & ORS. ..... Respondents

Through: Ms. Shiva Lakshmi, CGSC for UOI.
Mr. Amit Bansal, SSC with Mr.AmanRewaria and Ms. Vipasha Mishra, Advocates for respondent No. 3.

\+ **W.P.(C) 196/2019& CM APPL. 965/2019**

MICROMAX INFORMATICS LTD. ..... Petitioner

Through: Mr. Alok Yadav, Advocate.

versus

UNION OF INDIA & ANR. ..... Respondents

Through:
Mr. Amit Bansal, SSC with Mr.AmanRewaria and Ms. Vipasha Mishra, Advocates for respondent No. 2.

\+ **W.P.(C) 8496/2019**

DEVELOPER GROUP INDIA PRIVATE LIMITED..... Petitioner

Through: Ms. Kavita Jha, Mr. Shammi Kapoor, Ms. Kritika Kapoor and Ms. Swati Agarwal, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms. Shiva Lakshmi, CGSC with Ms. Nidhi Mohan Parashar, G.P for Respondent No. 1/ UOI.
Mr. Amit Bansal, SSC with Mr.AmanRewaria and Ms. Vipasha Mishra, Advocates for respondent Nos. 2 & 3.

\+ **W.P.(C) 13203/2019**

RELIANCE ELEKTRIK WORKS ..... Petitioner

Through: Mr. Ruchir Bhatia and Ms. Madhura M.N., Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. AshimSood, CGSC with Mr.Armaan Pratap Singh, Advocates for respondent No. 1.
Mr. Anuj Aggarwal and Mr. Ankit Monga, Advocates for respondent No.3/ GNCTD.
Mr. Harpreet Singh and Ms. Suhani Mathur, Advocates for GST.

CORAM:
HON'BLE MR.JUSTICE VIPIN SANGHI
HON'BLE JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J

1. All the four writ petitions seek identical relief in the nature of a writ of Mandamus directing the respondents to permit the petitioners to avail input tax credit of the accumulated CENVAT credit as of 30th June, 2017 by filing declaration Form TRAN-1 beyond the period provided under the Central Goods and Services Tax Rules, 2017 (hereinafter, the "CGST Rules"). Additionally, petitioners also assail Rule 117 of the CGST Rules on the ground that it is arbitrary, unconstitutional and violative of Article 14 to the extent it imposes a time limit for carrying forward the CENVAT credit to the GST regime. However, all the petitioners have unanimously stated that if the Court were to give directions to the respondents to permit them to file the statutory Form TRAN-1 to avail the input tax credit, they would be satisfied and not press for the relief of challenging the vires of the provisions of the Act.

2. This Court has allowed numerous petitions, relating to availment of input tax credit on account of delayed filing of Form TRAN-1. The controversy in the present petitions is no different, but nonetheless respondents have strongly objected to the directions sought in the present petitions, contending that the factual situation in each one of the present cases is quite different, and does not merit the relief granted to other taxpayers. It is argued that the Court has allowed the petitions only in those cases, where the delay had been occasioned on account of technical glitches in the Goods and Services Tax Network (GSTN). The facts of the instant cases are substantially distinguishable, and do not indicate or allege any such error or glitch on the network of the respondents relating to the filing of the TRAN-1 forms. It is

further contended that the pleadings disclose that the delay in their cases did not occur on account of any technical glitch on the portal, but arose owing to other technical difficulties at the end of the assessees i.e. the petitioners. Petitioners controvert the stand of the respondent, and contend that they are entitled to similar relief, notwithstanding the fact that the cases of the petitioners may not be strictly covered by the Circular of the respondents specifically dealing with cases where technical glitches had restrained or blocked or caused difficulties to the taxpayers from filing of the TRAN-1 forms on the common GST portal.

3. Regardless of respondents' objection that there were no technical anomalies in the fling *vis-a-vis* the petitioners, we perceive no significant difference in the circumstances recounted in the cases before us in comparison to those decided earlier. Pertinently, since the cause for not filing the TRAN-1 Form within time is sufficiently explained and justified, we see no good ground or reason to deny the petitioners another opportunity to belatedly file their TRAN-1 forms. Nevertheless, since the respondents fervently contest the petitions, we permitted the learned counsels to make elaborate submissions as we feel that an authoritative decision is necessary to put the controversy to rest. Thus, this decision, exhaustively sets forth ourreasons for allowing the petitions.

4. The facts of each case are different, however, since the controversy is identical, it is not necessary to meticulously note the details of each case and it would suffice to take note of only the essential facts of each case.

W.P. No. 8496/2019

5. The petitioner is in the business of advertising, brand promotion and public relation management, as a part of Bennett Coleman Group of companies [Times Group]. It operates from various states throughout India, including New Delhi. It was registered under the provisions of Chapter V of the Finance Act, 1994 for service tax and was discharging its liability by way of filing service tax returns. The service tax return for the period from April, 2017 to June, 2017 was filed on 11th August, 2018 and the same exhibited an accumulated CENVAT credit of INR 72,80,5293. This accumulated CENVAT credit balance is *inter alia* attributable to the New Delhi premises of the petitioner. Petitioner had CENVAT credit reflected in the service tax return for the period April, 2017 to June, 2017 and was eligible to carry forward the said CENVAT credit amounting to Rs. 60,15,498/-. Petitioner contends that on 2nd January, 2018, based on the advice of its consultant, it was under the belief that it was eligible for refund under Section 142(3) of the CGST Act, and the consultant filed an online refund application. However due to technical glitch, an error appeared on the screen. Thereafter, on 13th February, 2018, when petitioners' consultant again tried to upload the refund application for CENVAT credit, yet again an error occurred and the message 'proxy error' was displayed on the screen. Petitioner's consultant visited the office of the Assistant Commissioner of GST to enquire about the error and was informed that Petitioner was not eligible for the refund under Section 142 (3) of the Act. On being apprised of this legal position, physical copy of Form TRAN-1 was filed on 24th August, 2018 along with supporting invoices before Deputy/Assistant

Commissioner of Central Excise, GST East Division. Petitioner was informed that the application would be verified and it would be intimated about the outcome. Thereafter, vide letter dated 30th August, 2018, additional documents as required by the respondents were also submitted, but nothing was heard in this regard. Eventually, petitioner filed writ petition W.P.(C) 3099/2019 before this Court praying for refund or carry forward of all the accumulated CENVAT credit. Vide order dated 28th March, 2019, respondents were directed to obtain instructions as to whether the refund/carry forward credit application could be processed and if GST council can consider such cases of hardship on individual basis.

6. Petitioner has now filed the present petition seeking writ in the nature of Certiorari impugning Rule 117(1) of CGST rules as *ultravires* Section 140(1) of the CGST Act and in the alternative, seeking directions to read down the provisions of Rule 117.

W.P. (C) 11040/2019

7. In this case, petitioner claims that in terms of the latest service tax return from April, 2017 to June, 2017, it had accumulated CENVAT credit balance of INR 72,80,529/-. Petitioner forms part of a bigger conglomerate and the tax operations are undertaken at group level. Owing to dependence at group level in the context of tax compliances and multiple entities involved, petitioner was unable to file the declaration in Form TRAN-1 within the prescribed due date. As a result, it was deprived of taking forward the accumulated credit in the GST regime.

W.P.(C) 196/2019

8. In terms of the last service tax return, petitioner had CENVAT credit of Rs. 6,04,47,033/-. It submitted form GST TRAN-1 online on 24th November, 2017 in order to avail the transitional credit. Thereafter, it received a letter dated 1st January, 2018 from the office of Assistant Commissioner GST seeking its response in relation to verification of input tax credit claimed in form TRAN-1. While collating the documents in response to the said communication, petitioner realised that credit of Rs.6,04,47,033/- was mistakenly not carried forward. Petitioner again tried to submit the said form on the GST common portal with a view to avail this credit. Additionally, petitioner replied to the aforenoted communication dated 1st January, 2018 explaining that it had inadvertently missed reflecting the correct CENVAT credit in the Form, in conformity with the last service tax return. In support of its claim, petitioner also furnished the last service tax return [ST-3 form]. On 6th April, 2018, petitioner made another reference to the respondents highlighting the Circular issued by Central Board of Indirect Taxes and Customs wherein a mechanism was introduced to assist the taxpayers who had faced difficulties owing to technical glitches. Despite repeated follow ups, no reply was received from the respondents and finally, vide letter dated 9th May, 2018, respondents informed the petitioner that the credit of Rs. 6,04,47,033/- was not populated in TRAN-1 and, thus, the credit thereof cannot be extended to the petitioner.

W.P.(C) 13203/2019

9. In this case as well, petitioner contends that it had been trying to upload

its claim for carrying forward the credit in form GST TRAN-1 but could not do so due to error in the system of the respondents. Petitioner enquired from other professionals and learnt that apart from it, large number of assessees were facing similar problems and could not upload the claim of input credit on account of system error/failure. Petitioner submits that on account of utter confusion and chaos that resulted in failure to upload Form GSTR TRAN-1, it could not upload the claim on the common portal within time. Petitioner also engaged in correspondence with the respondents, however there has been no effective resolution to its grievance.

SUBMISSIONS OF THE PARTIES

10. The Learned counsels for the petitioners have strongly relied upon the judgment in ***A.B. Pal Electricals v Union of India*** (**W.P.(C) 6537/2019** (decided on 17.12.2019) and several others, which have been referred therein to canvass that the instant cases are squarely covered by the said decision. At the same time it is urged that since the GST system at the relevant point of time, and even presently, is in a nascent "trial and error" phase, petitioners should not be made to suffer on account of inefficiency in the systems of the respondents; by denying them the credit of the accumulated CENVAT credit on the due date. Besides, it was argued that the CENVAT credit accumulated in the erstwhile regime represents the property of the petitioner which is a vested right in their favour. Such accrued or vested right cannot be taken away by the respondents on account of failure to fulfil conditions which are merely procedural in nature. The accumulated CENVAT credit is the property of the assessee and a constitutionally protected right under Article 300A of the Constitution,

which cannot be taken away by framing Rules without there being any substantive provision in this regard under the Act. On another note, it is urged that the time limit specified in Rule 117 of CGST Rules is procedural in nature, and not a mandatory provision, and thus period provided therein cannot be enforced so as deprive the petitioners from availing their vested right. In support of this contention, reliance is placed upon the decision of the Supreme Court in the case of ***SCG Contracts India Pvt. Ltd. vs. KS Chamankar Infrastructure Pvt. Ltd.*** 2019 SCC OnLine SC 226**.**

11. Mr. Amit Bansal, and other learned senior standing counsels for the Revenue, on the other hand, have strongly opposed the petitions. They have argued that the petitioners do not deserve any sympathy from this Court, as the facts of each case exhibit a casual approach on their part. Petitioners' failure to file the declaration Form TRAN-1 within the due date is not attributable to any technical glitches while uploading the forms. The delay is a result of their follies and do not warrant relief similar to what has been granted by this Court in several other cases. It is also pointed out that some of the petitioners attempted to file TRAN-1 for the first time after the expiry of the last date for filing TRAN-1, as admitted in the pleadings. The petitioners were negligent, and do not deserve any leniency. Mr. Bansal defended Rule 117 of the CGST rules by arguing that under Sub-section (1) of Section 164 of the CGST Act, Government is authorised to make rules for carrying out the provisions of the Act on recommendation of the Council. He submitted that the CGST Rules laid down by the Central Government, including the Rules impugned in the present petition, flow from the Act and are in consonance with the intention of the legislature. Mr. Bansal

emphasized on the words "*in such manner as may be prescribed*" which are appearing in Sub-Section (1) of Section 140 as follows:

> "*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***"
>
> (emphasis supplied)

He submits that this provision empowers the Government to fix the time frame for availing the carry forward of input tax credit by transitioning the CENVAT credit into the GST regime. He further submits that benefit of taking credit is not a vested right of an assessee and certainly cannot be claimed in perpetuity. The same is subject to certain conditions, safeguards and limitations in such manner as may be prescribed. Mr. Bansal further argued that the input tax credit is in the nature of benefit/concession extended as per the scheme of this statute. The rules, therefore, can be framed to limit the benefit while extending the concession. In support of his submissions, Revenue relied upon the case of ***Willowood Chemicals Pvt. Ltd. vs. Union of India 2018 (19 G.S.T.L 228 Gujarat),*** and ***ALD Automotive Pvt. Ltd. vs. Commercial Tax Officer 2018 (364) ELT 3 (SC).***

ANALYSIS AND CONCLUSION

12. On 1st July, 2017, the new indirect tax regime was introduced in the country by way of enactments, including the Central Goods and Services Tax Act, 2017 (CGST Act). The CGST Act introduced transitionary provisions to enable the taxpayers to migrate from the erstwhile indirect tax

regime to the new GST regime. Section 140 of the CGST Act deals with the transitionary provisions. Section 140 has several sub-clauses, however, since all the four petitioners are covered by sub clause (1) of the Section 140, we are focusing on the said provision alone, and the same reads as under:

> *"140. (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."*

13. In pursuance of the above noted provision, respondent No.1 framed the Central Goods and Services Tax Rules, 2017 ('CGST Rules'). Rule 117 of the said rules imposed a time limit of 90 days for availing benefit of the accumulated CENVAT credit as provided under Section 140 (1) in its input tax credit register under the CGST Act. The said Rule 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."

14. The transition from the erstwhile regime to GST for the availment of the CENVAT credit was to be by way of a declaration to be submitted electronically in Form GST TRAN-1. The date prescribed for filing of the said Form was extended several times by way of orders issued from time to time, finally till 27th December, 2019. Several taxpayers however could not meet the deadline. This was on account of several factors - predominantly being inadequacies in the network of the respondents, which failed to meet the expectations and serve the needs of taxpayers. Thousands of taxpayers complained that there was low bandwidth and despite several attempts being made on the GST Network, they were unsuccessful in filing the statutory GST TRAN-1 Form online. Scores of complaints were made on the portal and it was also brought to the notice of the government. The technical difficulties faced by the taxpayer were acknowledged and an IT Grievance Redressal Committee was constituted and assigned the task of redressing the grievance of the taxpayers. The recommendations of the Grievance Redressal Committee were also brought to the notice of the GST Council

and the matter was deliberated upon. Several cases got settled at the government level, however some cases were contested on the ground that taxpayers did not put forward any evidence to suggest that they faced any technical glitch on the portal that prevented them to submit the GST TRAN-1 Form within the prescribed time limit. Many such matters travelled to courts. Majority of them were allowed in favour of the taxpayers, and directions were issued to the respondents to permit the filing of TRAN-1 Form beyond the extended date. Some cases where such reliefs have been granted by this Court are ***M/s Blue Bird Pure Pvt. Limited vs. Union of India 2019 SCC OnLine 9250; SARE Realty Projects Pvt. Limited vs. Union of India*** [W.P.(C) 1300/2018decided on 1st August, 2018] ,***Bhargava Motors vs. Union of India*** [W.P.(C) 1280/2019 decision dated 13th May, 2019] ; ***Kusum Enterprises Pvt. Limited vs. Union of India*** [W.P.(C) 7423/2019 decided on 12th July, 2019]. It would also be worthwhile to note that in this period, the government also acknowledged that on account of technical difficulties, the taxpayers were indeed unable to file the statutory form within time and CBIC vide notifications issued from time to time, extended the date prescribed for filing of Form GST TRAN-1 under Rule 117 (1A) of the CGST Rules. This period, as on date, is being extended by various notifications. Notably, vide Notification 48/2018-CT dated 10th September, 2018, the government inserted Sub-rule (1A) to Rule 117, whereby, on the recommendation of the Council, it is now permissible for the Commissioner to extend the date for submitting the declaration electronically in Form GST TRAN-1, by a further period 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. The said Sub-rule, reads as under:

> "*[(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*"

The insertion of Sub-rule 1(A) and, thereafter, extensions being granted for filing of GST TRAN-1, notwithstanding the period envisaged under sub rule (1) of Rule 117, demonstrates that the respondents recognize the fact that the registered persons were not able to upload GST TRAN-1 due to technical difficulties on the common portal. This also substantiates that the period for filing the TRAN-1 is not considered – either by the legislature, or the executive as sacrosanct or mandatory.

15. In the above factual background, in some of the cases that came up before this Court, the petitioners cited difficulties in filing the TRAN-1 Form which were of a different nature. In some cases, there were bonafide errors on the part of the taxpayer and in others, the difficulty arose on account of lack of understanding of the complete overhaul of the indirect tax system; or complicated filing procedure and the statutory forms resulting in erroneous information being stated therein. Even in such cases, to note a few, this Court has declined to make a differentiation and given the benefit of the doubt to the taxpayers, realizing that Respondent's network and

system, and the change, had posed multifarious problems that require a reasonable approach. One such petition has been preferred by the ***Sales Tax Bar Association*** [W.P (c) No. 9575/2017] narrating scores of technical problems being faced on the portal. We adopted a proactive approach in the said matter and have endeavoured to identify root cause for failure of the network to work seamlessly. In the said proceedings, we had also held a special hearing inviting the senior officials from the GSTN network as well as the officers of the Council and the policy makers. As a result of such deliberations, some headway has been made and recently we were informed that the respondents have revamped the GST redressal mechanism so as to address the problems at a grass-root level. The upshot of this experience is that the GSTN network, indeed, is riddled with shortcomings and inadequacies. This is palpably evident from the sheer number of cases being presented before us, in relation to such technical difficulties and inadequacies. The benchmark, in our view, is that the online system brought into force by the GSTN Ltd. should be able to perform all functions and should have all flexibilities/options, which were available in the pre-GST regime.The problems on the GSTN cannot be wished away, and have to be resolved in the right earnest. This requires sensitivity on the part of the Government which has, unfortunately, not been exhibited in adequate measure.

16. Now, coming back to the facts of the present cases. Are the facts before us such, as to deny the petitioners the relief extended to taxpayers covered by the category of “technical glitches or technical difficulties”? The facts of each case enumerated above indicate that the petitioners have, either, not

been vigilant of the timelines, or have been victims of the chaos and confusion that was prevailing at the time when the GST regime was introduced. As a result, Petitioners may not have concrete evidence in their hand to convincingly exhibit that they faced a technical issue on the GSTN portal while uploading the declaration in GST TRAN-1. We were faced with a similar situation in the case of ***AB Pal Electricals Pvt. Ltd. vs. Union of India*** in ***W.P.(C) 6537/2019*** decided vide judgmentdated 17th December, 2019. In the said case, the assessee could not file the form within prescribed time for the reason that the Managing Director of the company was not keeping well, and as a result was unable to attend to the business affairs of the company for a long time. The personnel responsible for dealing with compliances required to be made by the company, constantly reported that the GST portal was not working properly and, therefore, they were unable to access the portal and file the requisite details. When the Managing Director recovered from his illness, he followed up with the authorities by submitting a representation seeking benefit of the CBIC's orders issued from time to time-extending the last date for submission of the TRAN-1 Form. The case was considered by the GST Council, but it failed to redress his grievance and the matter reached before us. We considered the situation and accepted respondents' contention that the case of the petitioner could not be strictly considered as one covered by the situation of "technical glitches". Yet, we extended the benefit of the Circular to the said petitioner in the following terms:

> *"4. Petitioner relies upon several decisions of this Court including* ***M/s Blue Bird Pure Pvt. Ltd vs Union of India and Ors, 2019 SCC OnLine 9250*** *and* ***Sare Realty Projects Private***

Limited vs Union Of India,W.P. (C) NO. 1300/2018, *decided on 01.08.2018to urge that the Court has granted reliefs to several other parties who were in similar situation.*

5. We have considered the submissions of the parties. The nature of reliefs sought in the present petition and the facts disclosed herein is fully covered by the decision of this Court in ***M/s Blue Bird Pure Pvt. Ltd*** *(supra) decided on 22.07.2019, wherein, following the decisions of this Court in* ***Bhargava Motors v. Union of India****, decision dated 13th May, 2019 in WP (C) 1280/2018 and* ***Kusum Enterprises Pvt. Ltd. v. Union of India****, 2019-TIOL-1509-HC-DEL-GST, the Court had directed the respondents to either open the online portal or to enable the petitioner to file the rectified TRAN-1 electronically or accept the same manually. The said decision has also been followed by this court in* ***M/s Aadinath Industries &Anr vs Union of India****,* ***W.P. (C) 9775/2019****, decided on 20.09.2019;* ***Lease Plan India Private Limited vs Government of National Capital Territory of Delhi and Ors****,* ***W.P.(C) 3309/2019****, decided on 13.09.2019;* ***Godrej & Boyce Mfg. Co. Ltd. Through its Branch Commercial Manager vs Union of India, W.P.(C) 8075/2019****, decided on 15.10.2019. The decision of this Court in* ***Krish Automotors Pvt. Ltd. v UOI*** *2019-TIOL-2153-HC-DEL-GST has also been followed by the Punjab & Haryana High Court in* ***Adfert Technologies Pvt Ltd v Union of India*** *in CWP No. 30949/2018 (O&M) decided on 04.11.2019.The relevant paragraphs of* ***M/sBlue Bird*** *(supra) read as under:*

> *"**10.** Having carefully examined those decisions, the Court is unable to find any distinguishing feature that should deny the Petitioner a relief similar to the one granted in those cases. In those cases also, there was some error committed by the Petitioners which they were unable to rectify in the TRAN-1 Form and as a result of which, they could not file the returns in TRAN-2 Form and avail of the credit which they were entitled to. In both the said decisions, the Court noticed that GST system is still in the 'trial and error phase' insofar as its implementation is concerned. It was observed in Bhargava Motors (supra) as under:*

"10. The GST System is still in a 'trial and error phase' as far as its implementation is concerned. Ever since the date the GSTN became operational, this Court has been approached by dealers facing genuine difficulties in filing returns, claiming input tax credit through the GST portal. The Court's attention has been drawn to a decision of the Madurai Bench of the Madras High Court dated 10th September, 2018 in W.P. (MD) No. 18532/2018 (Tara Exports v. Union of India) where after acknowledging the procedural difficulties in claiming input tax credit in the TRAN-1 form that Court directed the respondents "either to open the portal, so as to enable the petitioner to file the TRAN1 electronically for claiming the transitional credit or accept the manually filed TRAN1" and to allow the input credit claimed "after processing the same, if it is otherwise eligible in law".

11. In the present case also the Court is satisfied that the Petitioner's difficulty in filling up a correct credit amount in the TRAN-1 form is a genuine one which should not preclude him from having its claim examined by the authorities in accordance with law. A direction is accordingly issued to the Respondents to either open the portal so as to enable the Petitioner to again file TRAN-1 electronically or to accept a manually filed TRAN-1 on or before 31st May, 2019. The Petitioner's claims will thereafter be processed in accordance with law.

12. With a view to ensure that in future such glitches can be overcome, the Court directs the Respondents to consider providing in the software itself a facility of the trader/dealer being able to save onto his/her system the filled up form and also a facility for reviewing the form that has been filled up before its submission. It should also permit the dealer to print out the filled up form which will contain the date/time of its submission online. The Respondents will also consider whether there can be a message that pops up by way of an acknowledgement that the Form with the credit claimed has been correctly uploaded."

11. *Similar directions were issued by this Court in Kusum Enterprises Pvt. Ltd. (supra).*

12. *In the present case, the Court is satisfied that, although the failure was on the part of the Petitioner to fill up the data concerning its stock in Column 7(d) of Form TRAN-instead of Column 7(a), the error was inadvertent. The Respondents ought to have provided in the system itself a facility for rectification of such errors which are clearly bona fide. It should be noted at this stage that although the system provided for revision of a return, the deadline for making the revision coincided with the last date for filing the return i.e. 27th December, 2017. Thus, such facility was rendered impractical and meaningless."*

6. The factual position in the present case is not any different. Though, the case of the petitioner cannot be strictly categorized as covered by "technical glitches", however, as held in ***M/sBlue Bird (supra)****, the GST System is still in a 'trial and error phase' as far as its implementation is concerned and although the failure was on the part of the Petitioner, the error was inadvertent. The petitioner does not have any evidence or proof in support of his submission that the personnel responsible for dealing with the compliances was unable to file the requisite Form due to non-functioning of GST Portal. However, we have noticed that in large number of matters, the petitioner have similarly complained that before the deadline, they were not able to access the GST Portal. This could be presumably because of low bandwidth, given the fact that before the deadline, a large number of tax payers all over the country, were trying to submit the declaration in form TRAN-1. In these circumstances, we would thus give the benefit of doubt to the petitioner.*

7. At this juncture, it may be noted that as per Notification No.49/2019 dated 09.10.2019 issued by CBIC, the date prescribed for filing of Form GST TRAN-1 under Rule 117 (1A) of the CGST Rules has been extended to 31.12.2019. This itself demonstrates that the Respondents recognise the fact that the registered persons were not able to upload the Form GST TRAN-

1 due to the glitches in the system. It is not fair to expect that each person who may not have been able to upload the Form GST TRAN-1 should have preserved some evidence of it – such as, by taking a screen shot. Many of the registered dealers/traders come from rural/semiliterate background. They may not have had the presence of mind to create any record of their having tried, and failed, to upload the Form GST TRAN-1. They cannot be made to suffer in this background, particularly, when the systems of the Repsondents were not efficient. From the documents placed on record, it emanates that the Respondents have no cogent ground to deny the benefit of the Notification No. 49/2019 dated 09.10.2019 issued specifically to grant relief to taxpayers who faced difficulty in filing Form GST TRAN-1 due to technical glitches.

8. We may further add that the credit standing in favour of an assessee is "property" and the assessee could not be deprived of the said property save by authority of law in terms of Article 300 (A) of the Constitution of India. There is no law brought to our notice which extinguishes the said right to property of the assessee in the credit standing in their favour.

9. Thus, we allow the present petition and direct the respondents to either open the online portal so as to enable the petitioner to file the Form TRAN-1 electronically, or to accept the same manually on or before 31.12.2019. Respondents shall process the petitioner's claim in accordance with law once the Form GST TRAN–1 is filed. The petition is allowed in the aforesaid terms."

17. The above decision would also cover the case of the Petitioners, and there can be no two views about this proposition and we would like to extend similar benefit to them. Nevertheless, let's delve into the more fundamental question - Whether the Government could curtail the accrued and vested right, and restrict it to 90 days by a subordinate legislation? To answer this vexed query, let's first examine the legal provisions. Sub-section (1) of Section 140 which deals with the transitory provision, permits carry

forward of the CENVAT credit. This presupposes that the amount of CENVAT credit of eligible duties has therefore accrued and is existing and reflected in the CENVAT credit register. Sub-Section (1) of Section 140 enables a registered person to carry forward such credit in the return relating to the period ending with the day (30th June, 2017) immediately preceding the appointed date which is 1st July, 2017 furnished by him under the existing law. The provisions of the Service Tax under Chapter V of the Finance Act stood repealed by virtue of the GST legislation as provided under Section 174 of the CGST Act. Thus, on the appointed date, the credits which existed under the previous regime were required to be transitioned to the new regime. This credit in every sense stood accumulated, acquired and vested on the appointed date as it was reflected in the said CENVAT credit register in the previous regime. On enactment of the CGST Act, no mechanism was provided for the refund of the credit that existed on the said date. The only mechanism was for utilization of such credit by migrating the same to the GST regime by way of filing declarationForm TRAN-1. The manner and procedure to carry forward the said CENVAT credit under Sub-Section (1) of Section 140 was to be 'prescribed'. The word 'prescribed' has also been defined under Section 2(87) to mean "*prescribed by Rules made under this act on the recommendation of the council*". This brings us to Rule 117 of CGST Rules, the relevant provision prescribing the manner in which the CENVAT credit has to be transitioned. Initially, the time limit prescribed under Rule 117 for transitioning was 90 days, as explained above, was extended from time to time. Evidently, there is no other provision in the Act prescribing time limit for the transition of the CENVAT credit, and the same has been introduced only by way of Rule 117. This provision also contains a

proviso, which vests power with the Commissioner to extend the period on the recommendations of the Council. Indeed, the Commissioner has exercised such power and time period which was initially to expire after 90 days, has been, as a matter of fact, extended till 29th December, 2017. In fact, as noticed above, under Sub-Rule (1A) of Rule 117, for a specific class of persons, the time limit has gone way beyond the period originally envisaged, and has still not expired. Thus, there is nothing sacrosanct about the time limit so provided. It is not as if the Act completely restricts the transition of CENVAT credit in the GST regime by a particular date, and there is no rationale for curtailing the said period, except under the law of limitations. The period of 90 days has no rationale and as noted above, extensions have been granted by the Government from time to time, largely on account of its inefficient network.

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 respondent's 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 assessees 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 assesee/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.

20. Now, let us also examine the case law relied upon by the Respondents. We find that the judgments cited by Mr. Amit Bansal are distinguishable on facts. In the case of ***ALD Automotive Pvt. Ltd. vs. Commercial Tax Officer*** (supra)reference was made to the judgment of the Supreme Court in ***Godrej & Boyce Mfg. Co. (P) Ltd. v. CST,*** (1992) 3 SCC 624. The relevant portion of the judgment is extracted herein below:

> *"**34.** The input credit is in the nature of benefit/concession extended to the dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the statute. Reference is made to the judgment of this Court in Godrej & Boyce Mfg. Co. (P) Ltd. v. CST [Godrej & Boyce Mfg. Co. (P) Ltd. v. CST, (1992) 3 SCC 624] . Rules 41 and 42 of the Bombay Sales Tax Rules, 1959 provided for the set-off of the purchase tax. This Court held that the rule-making authority can provide curtailment while extending the concession. In para 9 of the judgment, the following has been laid down: (SCC pp. 631-32)*
>
> > *"9. In law (apart from Rules 41 and 41-A) the appellant has no legal right to claim set-off of the purchase tax paid by him on his purchases within the State from out of the sales tax payable by him on the sale of the goods manufactured by him. It is only by virtue of the said Rules—which, as stated above, are conceived mainly in the interest of public—that he is entitled to such set-off. It is really a concession and an indulgence. More particularly, where the manufactured goods are not sold within the State of Maharashtra but are despatched to out-State branches and agents and sold there, no sales tax can be or is levied by the State of Maharashtra. The State of Maharashtra gets nothing in respect of such sales effected outside the State. In respect of such sales, the rule-making authority could well have denied the benefit of set-off. But it chose to be*

generous and has extended the said benefit to such out-State sales as well, subject, however to deduction of one per cent of the sale price of such goods sent out of the State and sold there. We fail to understand how a valid grievance can be made in respect of such deduction when the very extension of the benefit of set-off is itself a boon or a concession. It was open to the rule-making authority to provide for a small abridgement or curtailment while extending a concession. Viewed from this angle, the argument that providing for such deduction amounts to levy of tax either on purchases of raw material effected outside the State or on sale of manufactured goods effected outside the State of Maharashtra appears to be beside the point and is unacceptable. So is the argument about apportioning the sale-price with reference to the proportion in which raw material was purchased within and outside the State.""

In the said case, the appellant-company was a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu VAT Act)who was engaged in the business of leasing – management of the motor vehicles and resale of used motor vehicles. It claimed entitlement to input tax credit of the amount paid on the purchases made from the registered dealer of motor vehicle as per Section 19(2) of the Tamil Nadu VAT Act.As per Section 19(11), if a dealer had not claimed input tax credit for a particular month, the dealer could claim the input tax credit before the end of the financial year or before 90 days from the date purchase, whichever was later. When the petitioner filed its return for the assessment year 2007-08 - for want of tax invoices, the said input tax credit could not be claimed. Thereafter, he filed revised returns claiming input tax credit. This was disallowed by the commercial tax officer, which was then assailed in the writ petition before the High Court. The High Court set aside the order confirming the proposal

to disallow. The matter reached before the Apex court. Examining this controversy, the Court made the observations as noted in Para 32 above. In the said case, the input tax credit was not claimed and thus, in these circumstances, the Court concluded that the benefits envisaged in the taxing statue has to be extended as per the restrictions and conditions therein. Since the statute did not give any indication w.r.t extension of time for claim of input tax credit, the period could have been extended by authority. However, in the instant cases, the input tax credit had been claimed in the erstwhile regime and was being reflected in the CENVAT credit ledger. This credit, under the Section 140(1), has to be carried forward and in that sense, the vested right of the property of the petitioner stood accrued and the same cannot be taken away by the respondents by way of Rules. Likewise, the judgment of the Gujarat High Court in ***Willowood***(supra) is also not relevant. Moreover, the Punjab and Haryana High Court in ***Adfert Technologies Pvt. Ltd. vs. Union of India*** [CWP No. 30949/2018 (O&M) decided on 04.11.2019], took note of the decision in ***Willowood*** (supra), and observed that the Gujarat High Court itself, as well as this Court in subsequent judgements, has taken a contrary view to that expressed in ***Willowood*** (supra) [Ref: ***Siddharth Enterprises v. The Nodal Officer*** 2019-VIL-442-GUJ, ***JakapMetind Pvt Ltd v Union of India*** 2019-VIL-556-GUJ and ***Indsur Global Ltd. v. Union of India*** 2014 (310) E.L.T. 833 (Gujarat)].The Court therefore, proceeded to grant relief by permitting the taxpayer to file TRAN-1 Form electronically and manually beyond the stipulated date. We have been further informed that the decision of the Punjab and Haryana High Court was assailed before the Apex Court by Revenue in SLP 4408/2020 and , the same has resulted in a dismissal by

order dated 28.02.2020. Even otherwise, the observations made in ***Willowood*** (supra) have to be read in light of the fact that the time limit for filing TRAN-1 has been extended multiple times and the implementation of the GST regime and the transition thereto has been inefficient and rough.

21. Lastly, we also find merit in the submissions of the petitioners that Rule 117, whereby the mechanism for availing the credits has been prescribed, is procedural and directory, and cannot affect the substantive right of the registered taxpayer to avail of the existing / accrued and vested CENVAT credit. The procedure could not run contrary to the substantive right vested under sub Section (1) of Section 140. While interpreting Order VIII Rule 1 CPC, the Supreme Court has observed that the time limit for filing written statement is directory in nature and not mandatory, and that "*procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice*" [Ref: ***Salem Advocates Bar Association v. Union of India*** AIR 2003 SC 189]. Reference may also be made to ***Commissioner of Central Excise, Madras v Home Ashok Leyland (2007) 4 SCC 41***, wherein it was observed that the Rule 57E of the Central Excise Rules, 1944 was a procedural provision, which provides procedure for adjustment of MODVAT credit available to the taxpayer and, hence, the right available under the substantive provision cannot be deprived for non-compliance with the procedural provision. There is no consequence provided in Rule 117 of GST Rules on account of failure to file GST TRAN-1. The argument of the respondents is that the consequence is provided in Sub-Section (1) of Section 140 by way of a pre-condition for being entitled to transit the CENVAT credit in his

electronic credit register under the GST regime. We do not agree. Section 140 (1) is categorical. It states that the registered person "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….". Only the manner i.e. the procedure of carrying forward was left to be provided by use of the words "in such manner as may be prescribed". The limitation on the right to carry forward the CENVAT credit is substantively provided by the proviso to the said section. Those are the only limitations on the said statutory right. Under the garb of framing Rules – which are subordinate legislation, the width of those limitations could not have been expanded as is sought to be done by introduction of Rule (1A). In absence of any consequence being provided under Section 140, to the delayed filing of TRAN-1 Form, Rule 117 has to be read and understood as directory and not mandatory. Further, even in ***ALD Automotive Pvt. Ltd. v Commercial Tax Officer*****(2019) 13 SCC 225,** while dealing with the question of whether the provision prescribing time limit for claim of Input Tax Credit is directory or mandatory in nature, it was observed that "*whether particular provision is mandatory or directory has to be determined on the basis of object of particular provision and design of the statute*" and "*such interpretation should not be put which may promote the public mischief and cause public inconvenience and defeat the main object of the statute*". Therefore, in the present cases, the purport of the transitory provisions is to allow a smooth migration from the erstwhile service tax regime to the new GST regime and the interpretation must be in consonance with the said purpose.

22. We, therefore, have no hesitation in reading down the said provision [Rule 117] as being directory in nature, insofar as it prescribes the time-limit for transitioning of credit and therefore, the same would not result in the forfeiture of the rights, in case the credit is not availed within the period prescribed. This however, does not mean that the availing of CENVAT credit can be in perpetuity. Transitory provisions, as the word indicates, have to be given its due meaning. Transition from pre-GST Regime to GST Regime has not been smooth and therefore, what was reasonable in ideal circumstances is not in the current situation. In absence of any specific provisions under the Act, we would have to hold that in terms of the residuary provisions of the Limitation Act, the period of *three years* should be the guiding principle and thus a period of three years from the appointed date would be the maximum period for availing of such credit.

23. Accordingly, since all the Petitioners have filed or attempted to file Form TRAN-1 within the aforesaid period of three years they shall be entitled to avail the Input Tax Credit accruing to them. They are thus, permitted to file relevant TRAN-1 Form on or before 30.06.2020. Respondents are directed to either open the online portal so as to enable the Petitioners to file declaration TRAN-1 electronically, or to accept the same manually. Respondents shall thereafterprocess the claims in accordance with law. We are also of the opinion that other taxpayers who are similarly situated should also be entitled to avail the benefit of this judgment. Therefore, Respondents are directed to publicise this judgment widely including by way of publishing the same on their website so that others who may not have been able to file TRAN-1 till date are permitted to do so on or

before 30.06.2020.

24. All the petitions are allowed in the above terms.

SANJEEV NARULA, J

VIPIN SANGHI, J

MAY 05, 2020
v