

IN THE HIGH COURT OF ORISSA
AT CUTTACK

WP (C) No.17282 of 2018

M/s FIELD MOTOR PVT LTD
TELENGAPENTHA, CUTTACK

Vs

UNION OF INDIA AND OTHERS

K S Jhaveri, CJ & K R Mohapatra, J

Dated: April 3, 2019

Appellant Rep by: Mr. Ravi Raghavan, M/s. Mukesh Panda & L Sahoo & V Jena
Respondent Rep by: Mr. T K Satapathy (For O.P.No.2) Addl. Government Adv. (For O.P. No.6)

GST - The petitioner has challenged the action of opposite parties in not giving him the credit which he claimed under the new regime of GST - The main contention of petitioner is that they while putting his Form has committed an error - Instead of "7a-Duties and Taxes on inputs", it has filled "7d-Stock of goods" - And it was also forwarded by letter under Annexure-10 by the Joint Director (GST), Directorate General of Systems and Data Management addressed to the Senior Vice- President, Goods and Service Tax Network, wherein it was mentioned that the said letters pertains to GSTN therefore, are being forwarded for necessary action at your end - Under Annexure-12, a communication dated 19th July, 2018 (through e-mail) from Vice President- Finance addressed to different Goods and Service Tax Network (GSTN) authorities to resolve the problem in rectifying the mistake in GST TRAN-1 of petitioner's declaration - The only request, which is made by petitioner is that in view of subsequent developments and following reported decisions of other High Courts, the petitioner has a prima facie case for consideration - Taking into consideration the views of High Courts in *Privi Organics India Ltd. 2018-TIOL-2887-HC-AHM-GST*, *Tara Exports 2018-TIOL-2872-HC-MAD-GST*, *MSR Iron and Steel Industries India Private Limited and others 2018-TIOL-2850-HC-MAD-GST* and *M/s. Green Natural Extracts Pvt. Ltd. 2018-TIOL-2855-HC-KERALA-GST* - GST Council is directed to reconsider since the time is extended - Accordingly, the matter is remitted back to the GST Council to reconsider the case taking into consideration the ratio in the aforesaid case laws: HC

Writ petition disposed of

JUDGEMENT

Heard learned counsel for the parties.

2. By way of this writ petition, the petitioner has challenged the action of the opposite parties in not giving him the credit which he claimed under the new regime of GST.

2.1 The main contention of the petitioner is that the petitioner while putting his Form has committed an error. Instead of "7a-Duties and Taxes on inputs", it has filled "7d-Stock of

goods". Although there was incorrect entry in the prescribed format, but the Commissioner, GST & Central Excise, Bhubaneswar Commissionerate, vide letter dated 07.06.2018 (Annexure-9) communicated as under:

To

The Additional Director General,
Directorate General of Systems & Data
Management, 4th & 5th Floor, Hotel Samrat,
Chanakyapuri,
New Delhi - 10021

Sir,

Sub: Forwarding of request of M/s. Field Motor Private Limited, Cuttack, for approval of TRAN-I Credit entry- reg.

Please find enclosed a copy of letter dated 09.05.2018 (along with enclosures) of M/s. field Motor Private Limited, Cuttack, an assessee under Bhubaneswar GST & Central Excise Commissionerate, regarding approval of their TRAN- 1 Credit entry. Contents of their letter are self-explanatory.

From the assessee's letter, it appears that they had erroneously filed TRAN-1 Credit entry against "7d-Stock of goods" instead of "7a-Duties and Taxes on inputs". The assessee claims to be in possession of all duty paying documents. The assessee also communicated with GST Help-Desk and they were advised to furnish screenshots of the Electronic Cash Ledger and the tab, where ITC details are shown as pending. The assessee complied with this on 27.04.2018 (copy of E-mail communication is enclosed). However, their problem is yet to be resolved. In light of the above, the request of the party may be decided for revision (or otherwise) of their form TRAN-1 at an early date as the same is pending since 26.12.2017."

2.2 And it was also forwarded by letter dated 14/15.06.2018 under Annexure-10 by the Joint Director (GST), Directorate General of Systems and Data Management addressed to the Senior Vice- President, Goods and Service Tax Network, wherein it was mentioned that "2. The said letters pertains to GSTN therefore, are being forwarded for necessary action at your end." Under Annexure-12, a communication dated 19th July, 2018 (through e-mail) from Vice President- Finance addressed to different Goods and Service Tax Network (GSTN) authorities to resolve the problem in rectifying the mistake in GST TRAN-1 of the petitioner's declaration, relevant portion of which is quoted below:-

"We are informed by office of DG Systems, New Delhi that they have already forwarded letter of Commissioner GT Bhubaneswar to your office vide its letter dated 15 June, 2018 for approval of TRAN- 1. They also provided us copy of that letter, which we are attaching for your kind reference.

Your good-self is requested to kindly resolve our problem to get credit of TRAN-1 in electronic ledger.

With this reference, we also seek an appointment to meet you for explaining our case.

Please provide us date and time to meet you at your earliest convenience."

2.3 Thereafter, petitioner got some assurance vide e-mail dated 28.07.2018 under Annexure-13 from the GST Helpdesk, relevant portion of which is quoted below:-

"Problem Reported: Wrong ITC was claimed under TRAN-1

Resolution: This is in reference to your query, TRAN- 1 window has been closed because last date for filing TRAN-1 was 27th December 2017 as per government notification. Amendment is also not available on the portal. Request you to update on www.gst.gov.in for further notification.

For further concerns regarding GST, please free to contact the GST helpdesk No.(0120-4888999) to visit Grievance Redressal portal <https://selfservice.gstsystem.in/> to log a ticket."

2.4 And taking into consideration the facts, the only request, which is made by learned counsel for the petitioner is that in view of subsequent developments and following reported decisions of other High Courts, the petitioner has a prima facie case for consideration. He also placed reliance upon those case laws as under:

2.5 High Court of Gujarat, in the case of *Privi Organics India Ltd. Vs. Union of India*, reported in 2018/VIL-480-GUJ = **2018-TIOL-2887-HC-AHM-GST**, observed as under :-

"3. The main grievance of the petitioners, however, need further examination. Counsel for the petitioners pointed out that Form TRAN-1 was filed by the petitioners on 08.07.2017 showing balance CENVAT Credit of Rs. 1,06,08,998/-. However, due to pure over-sight and typographical error, the CENVAT Credit admissible in ITC was shown as "Nil". On account of this wrong declaration, the petitioners would not be able go migrate the left over CENVAT Credit as on 30.06.2018 to the GST regime. Counsel pointed out that the last date by extension for filing Form TRAN -1 was 27.12.2017, before which date, the petitioners had attempted to make correction in the said Form.

4. A letter was written to the authorities on 25.11.2017 stating as under;

"Referring to out telecommunication on help desk at the time of filing TRANS 1 in the head of Amount of Tax Credit Carried Forward, We missed to enter the amount in Column Cenvat Credit admissible as ITC and as a result Cenvat Credit is not carried over. Moreover we do not have option of re-open TRANS 1..."

5. In response to such letter, the petitioners received following response from the authorities;

"Resolution :With respect to your stated query, kindly met all the system requirements, system showing "Access denied" then, please clear your cache and login to GST portal again with correct username and password (This could be a session time out issue). Retrieve your username and password and log-in again."

6. Thus, after following the procedure, as suggested in the said letter, the petitioners could not correct the TRAN-1 declaration. The petitioners so conveyed to the respondents on 15.03.2018, as under;

"While filing TRANS 1 we missed to enter tax credit carried forward 5(a), 5(b), 5(c) in Cenvat Credit admissible as ITC. Later we have lodged a complaint to GST Helpline on 16th November 2017. Till date nothing has happened. Our "Service Request Number" is 201712191829221."

7. Counsel for the petitioners would contend that the TRAN-1 declaration was filed within time and attempt was also made before the last dated, i.e. 27.12.2017, to correct a pure typographical error. However, the system did not accept such correction. The petitioners would, thus, lose the entire CENVAT Credit balance of Rs. 1,06,08,998/-

8. It would, prima facie, appear that the extended time for making declaration, which was extended upto 27.12.2017, would take within its fold, any typographical or such other corrections, which may be noted in the declaration already filed. Even otherwise, the case of the petitioners would, perhaps, fall within the situation of the assessee being unable to file correct declaration due to technical glitches on the official portal, for which purpose, the Commissioners are authorized to grant extension upto 31.03.2019."

2.6 High Court of Madras-Madurai Bench, in the case of *Tara Exports v. Union of India and others*, reported in [2018] 58 GSTR 46 (Mad) = **2018-TIOL-2872-HC-MAD-GST** observed as under:-

".....On a perusal of the judgments/orders relied upon by the petitioner, it is seen that relief, as sought for, has been granted in favour of the aggrieved petitioners to some extent.

The circular issued by the Union Government has also recognized that the grievances of the taxpaying public are genuine in character and therefore, evolved a structural mechanism to address the grievances of general and specific natures. In respect of TRAN 1, the guidelines gave relief only to the payers, who had attempted to file TRAN 1 in the GSTN portal before the statutory due date, i.e., December 27, 2017. The onus to provide evidences, for non-filing before the due date because of technical glitches, was left with the tax payers, vide the above circular. Hence, the petitioner has made attempts even to file their return by manual mode, before the Assistant Commissioner, CGST and Central Excise, Tirunelveli, on January 31, 2018, which, in the opinion of this court, is a genuine attempt made by the petitioner.

8. GST is a new progressive levy. One of the progressive ideal of GST is to avoid cascading taxes. GST Laws contemplate seamless flow of tax credits mately accrued in the GST transition. The due date contemplated under the laws to claim the transitional credit is procedural in nature. In view of the GST regime and the IT platform being new, it may not be justifiable to expect the users to back up digital evidences. Even under the old taxation laws, it is a settled legal position that substantive input credits cannot be denied or altered on account of procedural grounds.

9. In view of the foregoing discussions and also considering the special circumstances of the case that the petitioner has made genuine efforts for filing returns not only through online but also manually, this court is of the view that the petitioner may be granted the relief as prayed for. 10. Accordingly, this writ petition is disposed of, with a direction to the respondents either to open the portal, so as to enable the petitioner to

file the TRAN 1 electronically for claiming the transitional credit or accept the manually filed TRAN 1, dated January 31, 2018, and allow the input credits, after processing the same, if it is otherwise eligible in law. Considering the facts and circumstances of this case, this court has passed the above order and therefore, it shall not be precedent. No costs."

2.7 High Court of Madras, in the case of *MSR Iron and Steel Industries India Private Limited and others v. Joint Commissioner of Sale Taxes, Coimbatore Division, Coimbatore and others*, reported in [2018] 58 GSTR 50 (Mad) = **2018-TIOL-2850-HC-MAD-GST** observed as under:-

"...4. The main grievance in all these writ petitions is that the respective writ petitioner is not in a position to take excise duty credit in the stock of goods on the appointment of GST (as on June 30, 2017) in view of certain lack of clarity in the new transition provisions under the GST Act. It is not in dispute that a circular has been already issued on April, 3, 2018 by the Central Board of Indirect Taxes, by setting up a grievance redressal mechanism to address certain grievance of the assesses, which contemplates the appointment of a nodal officer to address the problem faced by the taxpayers due to the problem faced by such people in the GST portal during the transitional period. It is also not in dispute that the Government of Tamil Nadu vide proceeding dated May 18, 2018 already nominated a State level nodal officer to address the problem faced by the tax payers. Therefore, when such grievance redressal mechanism has already been formed by the Central Board of Indirect Taxes and consequently, a nodal officer is also appointed by the State Government, it is for the petitioners/assesses, to submit their applications in accordance with the said circular before the concerned nodal officer.

5. Accordingly, all these writ petitions are disposed of, without expressing any view on the merits of the matter, only with the following directions:

(a) The respective writ petitioner shall submit their application in accordance with circular dated April 3, 2018 within a period of two weeks from the date of receipt of a copy of this order to the respective assessing officer/jurisdictional officer/GST officer.

(b) On receipt of such application, the assessing officer/jurisdictional officer/GST officer is directed to forward the application to the respective nodal officer within a period of one week.

(c) The nodal officer in consultation with the GSTN shall take note of the grievances expressed by the petitioners/assesses and forward the same to the grievance committee, which in turn would take an appropriate decision in the matter as expeditiously as possible, in any event, within a period of six weeks thereafter."

2.8 High Court of Kerala, in the case of *Leena P. Nair v. GST Council, New Delhi*, reported in 2018 (16) GSTL 434 (Ker.) = **2018-TIOL-2781-HC-KERALA-GST** observed as under:-

"In terms of the provisions contained in the Goods and Services Tax Statutes brought into force with effect from 01.07.2017, the petitioners in this batch of writ petitions, who have migrated to the GST regime, should have uploaded FORM GST TRAN-1 within the time stipulated to avail input tax credit in respect of their old stock. It is stated by the

petitioners that all of them have though attempted to upload FORM GST TRAN-1 within the time limit stipulated, they could not complete the process of uploading the form due to IT related glitches. The petitioners, therefore, seek appropriate directions in this regard in these writ petitions.

2. Today, when these matters were taken up, the learned counsel for the GST Network submitted that the issue W.P.(c).No. 9067 of 2018 & con. cases raised by the petitioners has now been resolved by the Government of India in terms of circular No.39/13/2018-GST dated 03.04.2018, as per which the GST Network was directed to identify the taxpayers who could not complete filing of FORM GST TRAN-1 on the basis electronic audit trail and to provide them facility to complete the filing of FORM GST TRAN-1.

3. In the light of the submission made by the learned counsel for the GST Network, the writ petitions are disposed of directing the GST Network to make appropriate facilities/provisions to enable the petitioners to complete the filing of FORM GST TRAN-1 as directed in circular No.39/13/2018- GST dated 03.04.2018. The petitioners are free to contact the Nodal Officers appointed by the GST Network, the Central and State Governments in terms of the said circular, for follow-up action."

2.9 High Court of Kerala, in the case of M/s. Green Natural Extracts Pvt. Ltd. v. The Assistant Commissioner, CGST and Central Excise, Ernakulam and others, reported in 2018 (8) TMI 1735 = 2018-TIOL-2855-HC-KERALA-GST observed as under:-

"The petitioner, a company, registered under the Kerala Value Added Tax Act, has now migrated to the Goods and Services Tax regime. To use the input tax available to its credit at the time of migration, the petitioner had to upload FORM GST TRAN-1 within the stipulated time. The petitioner asserts that though it attempted to upload the form within the time, it failed because of some system error. The petitioner, therefore, seeks directions for taking credit of the available input tax.

2. Heard the learned counsel for the petitioner, Sri N.Nagaresh, the learned Assistant Solicitor General and Dr.Thushara James, the learned Government Pleader, as well as Sri P.R. Sreejith, the learned counsel for Standing Counsel besides perusing the record.

3. The Government of India issued a circular for setting up an IT Grievance Redressal Mechanism to address the problem a taxpayer faces due to glitches, if any, in the Common Portal. This would be publicized adequately.

5.2 Taxpayers shall make an application to the field officers of the nodal officers where there was a demonstrable glitch on the Common Portal in relation to an identified issue due to which the due process as envisaged in law could not be completed on the Common Portal.

5.3. Such an application shall enclose evidences as may be needed for an identified issue to establish bona fide attempt on the part of the taxpayer to comply with the due process law.

5.4. These application shall be collated by the nodal officer and forwarded to GSTN who would on receipt of application examine the same GSTN shall after verifying its

electronic records and the applications received, identify the issue involved where a large section of tax payers are affected GSTN shall forward the same to the IT grievance Redressal Committee with suggested solutions for resolution of the problem.

(Italics supplied)

4. Not only the petitioner but also may other people faced this technical glitch and approached this Court Both the learned counsel submits that this Court on earlier occasions permitted the petitioner to apply to the Nodal Officer concerned to have the issue resolved.

5. So, here the petitioner may apply to the Nodal Officer. The petitioner applying, the Nodal Officer will look into the issue and facilitate the petitioner's uploading FORM GST TRAN-1, without reference to the time from Ordered so.

6. I may also observed that if the petitioner applies within two weeks after receiving this judgment the Nodal Officer will consider it an take steps within a week thereafter, if the uploading of FORM GST TRAN-1 is not possible for reasons not attributable to the petitioner, the authority will also enable it to take credit of the input tax available at the time of its migration.

With these directions, I disposed of the Writ Petition."

2.10 High Court of Madras, in the case of *P. Thirumurthi Chettiar v. State of Madras and another*, reported in 1967 SSC Online Mad 66: AIR 1969 Mad 91 : (1968) 21 STC 21 STC 489 observed as under:-

"The petitioner, who is carrying on business in cotton in Tiruppur filed this writ petition to quash an order dated 16-1-1963 refusing refund of tax paid by him and another order dated 7-7-1964, passed by the Board of Revenue rejecting his application for revision preferred against the order dated 16-1-1963. It is just necessary to state a few facts before I dispose of this writ petition.

2. The matter that led to the filing of this writ petition was an application filed by the petitioner for refund of sales-tax paid by him under the Madras General Sales Tax Act- As the petitioner was carrying on business in cotton, he was assessed under the local Act and the point for levy of sales tax is the last purchase if it is within the State. As cotton is declared goods under the Central Sales Tax Act. If the petitioner sells his cotton outside the State, he will again be assessed. In order to avoid injustice, Section 4 of the Madras General Sales Tax Act provided by a proviso that an assessee would be entitled to a refund on the tax so levied under the Central Sales Tax Act, that is, if he has paid the tax at the last purchase point and if he sells cotton outside the State and if tax is levied on that sale, he would be entitled to refund of the tax.

3. In this case, the petitioner applied for a refund from time to time in the months of August to November, 1962, His applications for refund were dismissed mainly on the ground that he did not pay part of the taxes so levied both under the Madras Act and the Central Act. When he filed a revision to the Deputy Commissioner, the order was confirmed on 29th January, 1963, The petitioner subsequently paid all the taxes and then wrote a letter dated 17- 12-1963 to the assessing officer informing him that he has

paid all the taxes and praying for a refund already asked for. But this letter was summarily disposed of by the Commercial Tax Officer informing the petitioner that the matter had already been settled and the revision petition filed by him had also been dismissed by the Deputy Commissioner and that the petitioner might, if so advised, seek remedy from higher authorities. This order was passed on 22-12-1963, but it was actually received by the petitioner on 28-12-1963. Under Section 35 (1) of the Madras General Sales Tax Act, he filed a revision to the Board of Revenue but it was only on 7-3-1964. When that came up before the Board of Revenue, it was rejected mainly on the ground that it was barred by limitation, and it was not disposed of on merits. Now it is to quash this series of orders that the present writ petition has been filed.

4. The learned Counsel contended before me that under the proviso to Section 4 of the Madras General Sales Tax Act, the words used are "the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be prescribed". The local authority framed rules under the Act Rule 23 (3) (i) which is relevant for our purpose states that such an application for refund should not be made more than three months from the date on which the movement of the goods from this State to any other State commenced. The contention of the learned Counsel for the petitioner is that such period of limitation prescribed in the rule is ultra vires, illegal and not binding on him. In support of this contention, the learned Counsel has cited the decision in Solar Works v. Employees State Insurance Corporation, it was observed by Anantanarayanan, J., (as he then was) which observations will be useful for our purpose, and they are to the effect that where an Act does not provide for limitation with reference to a particular matter and the delegation of the power to make rules is conferred by a section of the Act, which does not, expressly or impliedly relate to the power of prescribing time, the authority to which the power is delegated, viz., the State in this case, cannot make a rule prescribing limitation. This principle has been reiterated and followed by a Bench of this Court in Haji J, A. Kareem Sait v. Dy. Commercial Tax Officer, , where the Bench observed-

"No doubt limitation is procedural but it is also substantive. A rule covering those matters cannot, therefore, be made unless it be in the exercise of specific conferment of enabling rule-making power".

5. There is much force in the contention of the learned counsel for the petitioner that prescribing period of limitation for refund under Rule 23 (3) (i) is not valid and should be declared ultra vires, because the main Act does not prescribe any period of limitation. The words used are "shall be refunded" and there is no period of limitation prescribed.

6. The next question that would arise is whether the petitioner is entitled to claim a refund only after he had paid the taxes. Here again, the petitioner's learned Counsel contended before me that it was not necessary for the petitioner to claim refund after he actually paid the taxes. It is enough for him to have claimed a refund as soon as the tax is levied under the Act. The words used in the proviso are "tax so levied shall be refunded". But there was a subsequent amendment by Act 6 of 1963 and Section 4-A was introduced to this effect: "Tax BO levied and collected under Section 4 shall be refunded", and the rules were suitably amended. The importance of collection came into prominence only when the new provision came into force on 1-4-1963. At the time of the

application for refund by the petitioner, it was not necessary for him to have paid the tax and then claimed the refund. In the instant case, on the dates when the petitioner filed his applications for refund, this amended Section 4-A was not in force and therefore the petitioner was entitled to claim refund without having paid the tax.

7. When once I come to the conclusion that the rule-making authority has no jurisdiction to prescribe a period of limitation for obtaining a refund as provided in Section 4, then the petitioner can file an application for refund without any period of limitation. In the instant case, all the authorities have found that the petitioner had paid the taxes and was entitled to claim the refund but rejected that claim on the ground that such a claim was barred by limitation under Section 35 (1) of the Madras General Sales Tax Act. Of course, there was a delay of about a year, but in the affidavit in support of this writ petition, the petitioner has given plausible reasons for not making his claim for refund for so long. Since I am taking the view that there is no time prescribed for claiming the refund and since the petitioner has paid all the taxes due, I hold that the petitioner is entitled to claim refund.

8. In the result the writ petition is allowed. The refund application filed by the petitioner will be taken on file after the delay is excused and they will be disposed of afresh.

9. There will be no order as to costs in this writ petition.

10. Petition allowed."

2.11 High Court of Judicature at Bombay, in the case of O/E/N India Ltd. & another v. Union of India & others, reported in 2018 VIL 491 Bom. observed as under:-

"This petition under Article 226 of the Constitution of India, seeks directions to Respondent Nos.1 and 3 to allow Petitioner, to resubmit/ rectify its form TRARN-1 filed under Section 140 of the Goods and Service Tax, 2017 (the Act).

2. This directions is being sought as the Petitioners had by mistake, keyed in in-correct figurers of Cenvat Credit available as on 1st July, 2017, to be utilized under the new GST regime. 3. Respondents have filed an affidavit in reply of Mr. Milind Gawai, Commissioner, Central Tax, Punie-1 Pune dated 23rd October, 2 018. This Affidavit in reply dated 23rd October, 2018, inter alia states as under:-

"Further, in view of the directions dated 26-09- 2018 of this Court, it has been decided by the CBIC (Central Board of Indirect Taxes & Customs) that relief may be extended to the petitioner after due verification of the bona fides of the claims made by the petitioner from GSTN. Once the claims made by the petitioner have been verified, he may be allowed to amend the TRAN-1 to file correct amount of CENVAT credit to be transitioned."

4. In the above view, nothing survives in this petition.

5. However, Petitioners would have to file representation to the Central Board of Indirect Taxes and Customs (CBIC). This representation would be considered by the CBIC for verification and the bona fides of the claim made by the Petitioners. If satisfied, Petitioners would be allowed to amend the Trans-I form to reflect the correct amount of credit available. The CBIC will decide the petitioners' representation as expeditiously as

possible and preferably within a period of twelve weeks from the date the representation, is received by the CBIC.

6. Petition disposed of in the above terms."

2.12 High Court of Karnataka at Bengaluru, in the case of *M/s. Pragati Automotion Pvt. Ltd. v. The Union of India and others*, vide its order dated 31st January, 2019 in Writ Petition No.3159/2019 (T-RES.) observed as under:-

"The petitioner is before this Court seeking a direction to the respondents to permit the petitioners to correct the bonafide error which has crept in while filing the GST Tran-1 form because of which the petitioner is deprived of the transitional credit of an amount of Rs.9,74,57,802/- in their electronic credit ledge.

2. It is the contention of the petitioner that after the GST regime has been implemented in India, the petitioner filed GST TRAN-1 claiming credit of Rs.9,74,57,802/- in Column - 5 of Table 5(a) of Form GST TRAN -1 well within the time prescribed by the statute. Revised Form GST TRAN -1 was filed by the petitioner on 27.12.2017 after including the details of goods sent to job worker and held in his stock on behalf of the principal manufacturer in terms of Section 141 of CGST Act credit pertaining to job work. However, credit claim was indicated only in Column -5 of Table 5(a) but not in Column - 6. The electronic credit ledger reflected credit of Rs.5.89,346/-. The petitioner made several complaints before the Nodal Officer, but the same has not been considered so far.

3. It is hardly required to be stated that the Nodal Officer appointed under the Central Goods & Service Tax (CGST) Acts is obligated to consider the complaint of the petitioner and take a decision in the matter. However, the same has not been done, it is imperative for this Court to direct respondent No.7-Nodal Officer to consider the complaint/representation made by the petitioner at Annexure-H and K to the writ petition and take a decision in accordance with law in an expedite manner and is ordered accordingly."

2.13 A decision in the case of *Jay Chemical Industries Limited v. Union of India* (R/Special Civil Application No.10828 of 2018 disposed of on 11.10.2018) = **2018-TIOL-2880-HC-AHM-GST** in the High Court of Gujarat at Ahmadabad held as under:

"11. Under the circumstances, we do not see any scope for directing the respondents to allow the petitioner to correct the TRAN-1 declaration already made. We may recall, such time limit initially provided in the rules was extended from time to time and lastly upto 27.12.2017. Further, limited extension has been granted to cover cases where genuine hardships were felt in uploading said declaration due to technical glitches.

12. The case of Bombay High Court in case of *O/E/N/ India Ltd. & Anr.* (supra) was very different. The petitioner had pointed out a typographical error in filing up figure of unused CENVAT credit available, the Court was of the opinion that said mere typographical error should not be the governing factor for deciding substantive rights. The Court prima-facie felt that section 172 of the Act which enables the Government to take necessary decision to avoid hardships could be utilized. The present situation is entirely different.

13. In the result, petitioner is dismissed."

3. Taking into consideration the views of other High Courts, we direct the GST Council to reconsider since the time is extended. Accordingly, the matter is remitted back to the GST Council to reconsider the case taking into consideration the ratio in the aforesaid case laws.

4. Accordingly, the writ petition stands disposed of.