IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.30949 of 2018(O&M)

Date of Decision:-04.11.2019

Adfert Technologies Pvt. Ltd.

......Petitioner.

Versus

Union of India & Ors.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Jagmohan Bansal, Advocate for petitioners in CWP-30949, 32961, 30968, 33004-2018
CWP-395, 451, 6939, 10915, 12953, 14231-2019.

Mr. Sandeep Goyal, Advocate &
Mr. Rishabh Singla, Advocate for petitioners in
CWP-1074, 1187, 1239, 1299, 1596-2019
CWP-967, 3265, 5984, 6008, 8406, 4689, 4782, 5394-2019
CWP-5397, 5703, 7060, 10252, 9918, 14629-2019.

Mr. Sanjay Bansal, Senior Advocate assisted by
Mr. Amit Parsad, Advocate for Petitioner
in CWP No.29536 of 2018 &
CWP No.17676, 1702, 6988, 6995, 7652, 7798, 8122, 8142, 8187, 25283 and 27522 of 2019.

Mr. Surjeet Badhu, Advocate and
Mr. Veer Singh, Advocate
for petitioners in CWP-4842, 5977, 5983, 6124-2019.

Mr. Alok Mittal, Advocate for petitioner
in CWP-1976-2019.

Mr. Suresh Kumar Yadav, Advocate for Petitioner
in CWP No.8351 of 2019.

Mr. Amar Pratap Singh, Advocate &
Mr. Rohit Gupta, Advocate for Petitioner in
CWP Nos.19516, 27891, 15269, 28408, 28469, 27740, 27917, 27884, 27903, 27885, 27919, 28085, 27960, 28165, 27450,

27426, 4648, 9173, 21751, 21902 & 12365 of 2019.

Mr. Mavpreet Singh, Advocate for
Mr. Aman Bansal, Advocate for Petitioner(s)
(in CWP No.4557 of 2019).

Mr. Rajiv Sharma, Advocate with
Mr. Nikhil Sharma, Advocate for Petitioner(s)
in CWP Nos.5574, 6201, 8966, 19965, 6341, 6590 of 2019.

Ms. Anita Kumari, Advocate for
Mr. Rose Gupta, Advocate
for petitioners in CWP-10987, 9627, 10735-2019.

Mr. J.S. Bedi, Advocate
for petitioners in CWP-15286, 15578, 15665-2019.

Mr. Balwinder Singh, Advocate
for petitioners in CWP-29536-2018, 1702-2019.

Ms. Pridhi Jaswinder Sandhu, Advocate and
Ms. Niharika Gupta, Advocate for petitioner
in CWP-8594-2019.

Ms. Rimika Khera, Advocate
for petitioner in CWP-16206-2019.

Mr. Rakesh Sobti, Advocate for Petitioner
in CWP No.24809 & 25303 of 2019.

Mr. Dixit Garg, Advocate for Petitioner
in CWP No.4557 of 2019.

Mr. Shashank Shekhar, Advocate with
Mr. Arjyajeep Roy, Advocate &
Mr. Arjun Sheoran, Advocate for Petitioner in
CWP No.28203 of 2019.

Mr. Monish Panda, Advocate and
Mr. Mrinal Bharat Ram, Advocate for Petitioner(s) in
CWP Nos.39714 & 4014 of 2019.

Mr. Akhil Krishan Maggu, Advocate for Petitioner in
CWP No.9981 of 2019.

Mr. Ajayinder S. Dhillon, Advocate for
Mr. Ranjan Lakhanpal, Advocate in
CWP No.28408 of 2018.

Ms. Mamta Singla Talwar, Deputy Advocate General,
Haryana.

Mr. Pankaj Gupta, Additional Advocate General, Punjab.

Mr. Sourabh Goel, Senior Standing Counsel with
Mr. Sanjeeva Kumar Uppal, Advocate
for respondents No. 1 to 3 in CWP-32961, 33004-2018,
CWP-5703, 15665, 6201, 6341, 7060, 6590, 6939, 12953-2019,
CWP-6008, 4418, 16206, 4544, 5397, 5394, 4782, 4689-2019
CWP-10252, 3265, 8594, 10915, 8406, 32231, 9322-2019
CWP-14629, 15286, 15578, 17621, 17699, 19965, 21038,
27511, 25283, 5484, 20615-2019**;**
for respondent nos.1 to 3 in CWP No.17676 of 2019
for respondent nos.1 to 4 in CWP Nos.21751 & 21902 of 2019,
for respondent nos.1 to 3 in CWP Nos.21992, 24483 and 24451
of 2019**;**
for respondent nos.1 & 2 in CWP No.29279 of 2019 &
for respondent nos.1 to 3 in CWP No.29852 of 2019.

Mr. Sunish Bindlish, Senior Standing Counsel assisted by
Mr. Naman Jain, Advocate for respondents/UOI in CWP-977,
5983, 3971, 4014, 4648, 4842, 5574, 8351, 6124, 6988, 6995,
7652, 7798, 8122, 8142, 8187, 9173, 8966, 10735, 10915,
10987, 12365, 12953, 9627, 9918, 15269, 16017, 19516,
27885, 28085, 28469, 27903, 27919, 4557, 21751, 21902,
24809, 27426, 27450, 27917, 27960, 27884, 28165, 27740,
27891, 25303 & 28203 of 2019.

Mr. Puneet Pali, Advocate for
Mr. Amit Goyal, Advocate
for respondents No. 2 and 3 in CWP-30968 and
30949-2018.

Mr. Tajender Joshi, Advocate for respondents in
CWP Nos.395, 451, 4418, 5574, 6201, 6341
and 6590 of 2019.

***

JASWANT SINGH, J.

Through the instant common order, bunch***(**102 mentioned at the footnote of the judgment) of Civil Writ Petitions, involving identical issue are disposed of. The Petitioners are registered under Central/State Goods and Services Tax Act, 2017 and seeking direction under Article 226 of Constitution of India to Respondents to permit carry forward of unutilized CENVAT credit of duty paid under Central Excise Act, 1944 and Input Tax Credit (for short 'ITC') of VAT paid under PVAT Act, 2005 or HVAT Act, 2003 which could not be carry forwarded on account of **non-filing** or **incorrect** filing of prescribed statutory Form i.e. TRAN-1 by the stipulated last date i.e. 27.12.2017.

2. The Petitioners are registered with Respondent department under Central/State Goods and Services Tax Act, 2017 (for short 'CGST Act, 2017'). The Petitioners were registered under erstwhile Punjab VAT Act, 2005 or Haryana VAT Act, 2003 and/or Central Excise Act, 1944. The registered persons upon enforcement of GST regime on the appointed date i.e. 1.7.2017 were either having stock of inputs and capital goods which had already suffered duty under erstwhile Taxation Statutes or they were having unutilized CENVAT credit accrued under Central Excise Act, 1944 or Input Tax Credit accrued under State VAT Act. As per Section 140 of the CGST Act, 2017 registered persons are eligible to carry forward unutilized CENVAT credit and credit of duties/taxes paid on inputs/capital goods lying in stock. No time limit was prescribed under Section 140 of the CGST Act to carry forward unutilized credit, however under Rule 117 of the CGST Rules, 2017 period of 90 days from appointed day i.e. 1.7.2017 was prescribed which was extended from time to time and ultimately last date was fixed 27.12.2017. Due to one or another reason, Petitioners either could not load prescribed form electronically or incorrect form was loaded which could not be corrected within prescribed time. In this backdrop all the Petitions have come up for consideration before us.

3. To sum up, on the introduction of GST w.e.f. 1.7.2017, Petitioners migrated from VAT regime to GST regime. As per Section 140 of CGST Act, 2017 read with Rule 117 of CGST Rules, 2017, every registered person was required to file electronically FORM GST TRAN-1 with respect to unutilized input tax credit of duties and taxes paid under erstwhile tax regime. As per Rule 120A of the CGST Rules, 2017 registered person may revise his declaration once and submit revised declaration within the time period specified in Rule 117, 118, 119 and 120 of CGST Rules, 2017.

4. From the perusal of record and arguments of counsel for both sides, we find that there are two types of cases namely (i) registered persons who did/could not file TRAN-1 by 27.12.2017 and have no evidence of attempt to load TRAN-1 (ii) registered persons loaded TRAN-1 by 27.12.2017 but there is mistake and they want to revise already loaded TRAN-1.

5. Counsel for the Petitioners contended that there were so many reasons for non-filing of TRAN-I by 27.12.2017 which included press release showing last date 31.12.2017, availability of utilities to upload TRAN-I in September' 2017 instead of July' 2017, heavy load upon accountants who were having number of assesses, lack of proper knowledge of computer system, complexity in filling different columns of TRAN-I etc. On the question of incorrect loading of TRAN-I, it is common argument of all the counsel that people dealing with filing TRAN-I electronically are not well conversant with electronic system and on account of multiple columns mistake occurred which was unintentional.

The Petitioners further contended that unutilized CENVAT/ITC of duty/tax paid under Central Excise Act/VAT Act is vested right of Petitioners which cannot be washed away and any contrary interpretation would amount to violation of Article 14 as well 3000A of Constitution of India. It would further amount to double taxation which cannot be permitted in any taxation regime. The Petitioners prior to July' 2017 were duly registered with tax authorities under Central Excise Act, Finance Act, 1994 (Service Tax) and/or State VAT Act and Respondent-department has complete record of unutilized CENVAT/ITC thus department has no authority to deny credit on technical or procedural grounds. An assessee is entitled to ITC of GST paid on inputs/capital goods purchased after 01.07.2017 so there is no logic to deny ITC of duty/tax paid under old taxation regime.

On the question of incorrect filing of TRAN-I, it was contended that Respondent permitted registered persons to file TRAN-I by extending time upto 31.03.2019 who submitted evidence of attempt to load TRAN-I by 27.12.2017, thus there is no reason to deny same opportunity to those persons who filed incorrect TRAN-I. The department is entitled to raise demand in case any person has carry forwarded ITC in excess of its entitlement, thus there seems no reason to deny registered person to revise its TRAN-I if he has succeeded to carry forward less amount of credit.

The Petitioners in alternative contended that no Section or Rule of CGST Act, 2017 provides that unutilized ITC would lapse, if TRAN-I is not filed by due date thus, refund in cash may be sanctioned in terms of proviso to Section 142(3) of CGST Act, 2017 if it is held that Petitioners are not entitled to carry forward ITC because they failed to file TRAN-I by 27.12.2017.

6. Counsel for the Respondent contended that Government time to time extended period to load TRAN-I and it was mistake on the part of

Petitioners who did not attempt to load by 27.12.2017. Government has permitted all those registered persons to file TRAN-I by 31.03.2019 who furnished evidence of attempt to load TRAN-I upto 27.12.2017. There would be no end if Petitioners are permitted to load TRAN-I at this stage. The Petitioners cannot take excuse of technical glitches because they did not attempt to load TRAN-I by 27.12.2019. Hon'ble Gujrat High Court in the case of **Willowood Chemicals Pvt. Ltd. Vs. Union of India 2018(19) G.S.T.L. 228 (Guj.**) has upheld vires of Rule 117 of CGST Rules, 2017 and present Petitioners are not assailing vires of Rule 117 of CGST Rules, thus they are not entitled to any relief.

On the question of incorrect filing of TRAN-I, it was contended that one opportunity was granted to registered persons to revise TRAN-I, however present Petitioner failed to file revise TRAN-I by last date prescribed under Rule 120A of CGST Rules, 2017.

7. Before dealing with present controversy, it would be useful to look at relevant provisions of CGST Act, 2017 and rules made thereunder. The relevant provisions are extracted below:

> **Section 140. Transitional arrangements for input tax credit.** (1) A registered person, other than a person opting to pay tax under section 10, **shall be entitled to take**, in his electronic credit ledger, the amount of CENVAT credit **carried forward in the return** relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:
>
> **Provided that the registered person shall not be allowed to take credit in the following circumstances,** namely:-
>
> (i) where the said amount of credit is not admissible as input tax credit under this Act; or
>
> (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately

preceding the appointed date; or

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

Explanation.– For the purposes of this sub-section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012-Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:–

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;

(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and

(v) the supplier of services is not eligible for any abatement under this Act:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994(32 of 1994), but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,-

(a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and

(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of Sub-Section (3).

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:–

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is not paying tax under section 10;

(iii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and

(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoices relating to such services are received on or after the appointed day.

(8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier:

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law.

(9) Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

(10) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

Explanation 1.- For the purposes of sub-sections (3), (4) and (6), the expression "eligible duties" means–

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (58 of 1957);

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986); and

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001),

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Explanation 2.- For the purposes of sub-section (5), the expression "eligible duties and taxes" means–

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001); and

(viii) the service tax leviable under section 66B of the Finance Act, 1994 (32 of 1994), in respect of inputs and input services received on or after the appointed day.

Section 142. Miscellaneous transitional provisions.- (1) Where any goods on which duty, if any, had been paid under the existing law at the time of removal thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered person shall be eligible for refund of the duty paid under the existing law where such goods are returned by a person, other than a registered person, to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer:

Provided that if the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply.

(2) (a) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price

revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act;

(b) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised downwards on or after the appointed day, the registered person who had removed or provided such goods or services or both may issue to the recipient a credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such credit note shall be deemed to have been issued in respect of an outward supply made under this Act:

Provided that the registered person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has reduced his input tax credit corresponding to such reduction of tax liability.

(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(4) Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(5) Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.

(6) (a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

Provided that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act;

(b) every proceeding of appeal, review or reference relating to recovery of CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law and if any amount of credit becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(7) (a) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of duty or tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(b) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and any amount found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

(8) (a) where in pursuance of an assessment or adjudication proceedings instituted,

whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

(b) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944

and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

(9) (a) where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

(b) where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

(10) Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

(11) (a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;

(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

(12) Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day:

Provided that the said period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act, and are returned after a period specified in this sub-section:

Provided also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within a period specified in this sub-section.

(13) Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under any law of a State or Union territory relating to Value Added Tax and has also issued an invoice for the same before the appointed day, no deduction of tax at source under section 51 shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day.

Explanation.—For the purposes of this Chapter, the expressions "capital goods", "Central Value Added Tax (CENVAT) credit", "first stage dealer", "second stage dealer", or "manufacture" shall have the same meaning as respectively assigned to them in the Central Excise Act, 1944 or the rules made thereunder.

SECTION 16. Eligibility and conditions for taking input tax credit. — (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services —

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.

(c) subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39 :

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed :

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

Rule 117. Tax or duty credit 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 March, 2019, in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension**.

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

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

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

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

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

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

(i) the name of the supplier, serial number and date of issue of the invoice by the supplier or any document on the basis of which credit of input tax was admissible under the existing law;

(ii) the description and value of the goods or services;

(iii) the quantity in case of goods and the unit or unit quantity code thereof;

(iv) the amount of eligible taxes and duties or, as the case may be, the value added tax or entry tax charged by the supplier in respect of the goods or services; and

(v) the date on which the receipt of goods or services is entered in the books of account of the recipient.

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

(4)(a)(i) A registered person who was not registered under the existing law shall, in accordance with the proviso to sub-section (3) of section 140, be allowed to avail of input tax credit on goods (on which the duty of central excise or, as the case may be, additional duties of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975, is leviable) held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty.

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

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

(iii) The scheme shall be available for six tax periods from the appointed date.

(b) The credit of central tax shall be availed subject to satisfying the following conditions,namely:-

(i) such goods were not unconditionally exempt from the whole of the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated in the said Schedule;

(ii) the document for procurement of such goods is available with the registered person;

(iii) the registered person availing of this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in FORM GST TRAN 2 at the end of each of the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period;

(iv) the amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the common portal; and

(v) the stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person.

Rule 120A. Revision of declaration in FORM GST TRAN-1 - Every registered person who has submitted a declaration electronically in FORM GST TRAN-1 within the time period specified in rule 117, rule 118, rule 119 and rule 120 **may revise such declaration once and submit the revised declaration in FORM GST TRAN- 1electronically on the common portal within the time period specified in the said rules or such further period as may be extended by the Commissioner in this behalf**.

Emphasis Supplied

8. From the conjoint reading of above quoted provisions, we find that:

i) A registered person to carry forward or avail credit of duty/tax paid on inputs and capital goods under old taxation statutes was required to file TRAN-I;

ii) Certain restrictions are prescribed in proviso to Section 140(1) but restriction in terms of time frame is prescribed under Rule 117 (1) of the Rules;

iii) As per Rule 117 (1), TRAN-1 was required to be filed by due date which was declared 27.12.2017. There is no power under Rule 117 (1) to extend last date beyond 27.12.2017, however Rule 117(1A) was inserted w.e.f. 10.9.2018 by which last date was extended upto 31.12.2019.

iv) The last date i.e. 27.12.2017 prescribed under Rule 117(1) was extended upto 31.12.2019 where TRAN-I could not be filed due to technical glitches. In other words a registered person who is able to establish that he has failed to file TRAN-I by 27.12.2017 due to technical glitches was entitled to file TRAN-I upto 31.12.2019.

v) There is no provision to permit filing of TRAN-1 at subsequent stage who failed to furnish evidence of attempt to file by 27.12.2017.

vi) As per Rule 120A, one time amendment is permitted within time prescribed under Rule 117, 118, 119 or 120 or within the time period as may be extended by the Commissioner.

The Introduction of Rule 117(1A) & Rule 120A and absence of any time period prescribed under Section 140 of the Act indicate that there is no intention of government to deny carry forward of unutilized credit of duty/tax already paid on the ground of time limit.

9. Having scrutinized record of the case(s) and heard arguments of both sides, we find that on the introduction of GST regime, Government granted opportunity to registered persons to carry forward unutilized credit of duties/taxes paid under different erstwhile taxing statues. GST is an electronic based tax regime and most of people of India are not well conversant with electronic mechanism. Most of us are not able to load simple forms electronically whereas there were a number of steps and columns in TRAN-1 forms thus possibility of mistake cannot be ruled out. Various reasons assigned by Petitioners seem to be plausible and we find ourselves in consonance with the argument of Petitioners that unutilized credit arising on account of duty/tax paid under erstwhile Acts is vested right which cannot be taken away on procedural or technical grounds. The Petitioners who were registered under Central Excise Act or VAT Act must be filing their returns and it is one of the requirements of Section 140 of CGST Act, 2017 to carry forward unutilized credit. The Respondent authorities were having complete record of already registered persons and at present they are free to verify fact and figures of any Petitioner thus inspite of being aware of complete facts and figures, the Respondent cannot deprive Petitioners from their valuable right of credit.

10. During the course of arguments, counsel for the Petitioners submitted various judgments and we find that a Division Bench of Gujrat High Court in the case of **Siddharth Enterprises Vs The Nodal Officer 2019-TIOL-2068-HC-AHM-GST** has dealt with issue involved at length. It has been held that denial of credit of tax/duty paid under existing Acts would amount to violation of Article 14 and 300A of Constitution of India. Unutilized credit has been recognized as vested right and property in terms of Article 300A of the Constitution of India. We deem it appropriate to reproduce relevant extracts as below:

> " 33. In our opinion, it is arbitrary, irrational and unreasonable to discriminate in terms of the time-limit to allow the availment of the input tax credit with respect to the purchase of goods and services made in the pre-GST regime and post-GST regime and, therefore, it is violative of Article 14 of the Constitution.
>
> 34. Section 16 of the CGST Act allows the entitlement to take input tax credit in respect of the post-GST purchase of goods or services within return to be filed under Section 39 for the month of

September following the end of financial year to such purchase or furnishing of the relevant annual return, whichever is earlier. Whereas, Rule 117 allows time-limit only up to 27th December 2017 to claim transitional credit on pre-GST purchases. Therefore, it is arbitrary and unreasonable to discriminate in terms of the time-limit to allow the availment of the input tax credit with respect to the purchase of goods and services made in pre-GST regime and post-GST regime. This discrimination does not have any rationale and, therefore, it is violative of Article 14 of the Constitution.

35. The Supreme Court, in the case of *Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors., reported in AIR 1981 SC 487*, has held that Article 14 strikes at the arbitrariness because any action that is arbitrary, must necessarily involve negation of equality. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification. The doctrine of classification which is evolved by the courts is not para-phrase of Article 14 nor is it the objective and end of that Article. Wherever there is arbitrariness in the State action, whether it be of the legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution. We may quote the relevant paragraphs 16 and 17 of the judgment thus :

> *"16. If the Society is an "authority" and therefore "State" within the meaning of Article 12, it must follow that it is subject to the constitutional obligation under Article 14. The true scope and ambit of Article 14 has been the subject matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification. Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that that Article forbids discrimination and there would be no discrimination where the classification making the*

differentia fulfils two conditions, namely. (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action. It was for the first time in E. P. Ayyappa v. State of Tamil Nadu, (1974) 2 SCR 348 : (AIR 1974 SC 555), that this Court laid bare a new dimension of Article 14 and pointed out that that Article has highly activist magnitude and it embodies a guarantee against arbitrariness. This Court speaking through one of us (Bhatgwati, J.) said:

" The basic principle which therefore informs both Articles 14 and 16 is equality and inhibition against discrimination. Now what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

17. This vital and dynamic aspect which was till *then lying latent and submerged in the few simple but pregnant words of Article 14 was explored and brought to light in Royappa's case and it was reaffirmed and elaborated by this Court in Maneka Gandhi v. Union of India, (1978) 2 SCR 621 : (AIR 1978 SC 597), where this Court again speaking through one of us (Bhagwati, J.) observed :-*

> *"Now the question immediately arises as to what is the requirement of Art. 14: what is the content and reach of the great equalising principle enunciated in this article, There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.......... Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."*

This was again reiterated by this Court in International Airport Authority's case ((1979) 3 SCR 1014) at p. 1042: (AIR 1979 SC 1628) (supra) of the Report. It must therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the Courts is not paraphrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is *arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Article 12, Art. 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution."*

36. It is legitimate for a going concern to expect that it will be allowed to carry forward and utilise the CENVAT credit after satisfying all the conditions as mentioned in the Central Excise Law and, therefore, disallowing such vested right is offensive against Article 14 of the Constitution as it goes against the essence of doctrine of legitimate expectation.

37. The Supreme Court, in the case of *MRF Ltd. v. Assistant Commissioner (Assessment) Sales Tax, reported in 2006 (206) E.L.T. 6 (S.C.) =* ***2006-TIOL-124-SC-CT***, has held that a person may have a 'legitimate expectation' of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The doctrine of legitimate expectation has an important place in developing law of judicial review. We may quote the relevant paragraph 38 of the judgment thus:

> *"38. The principle underlying legitimate expectation which is based on Article 14 and the rule of fairness has been restated by this Court in Bannari Amman Sugars Ltd. v. Commercial Tax Officer, 2005 (1) SCC 625. It was observed in paras 8 and 9:*
>
> *"8. A person may have a 'legitimate expectation' of being treated in a certain way by an*

administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The doctrine of legitimate expectation has an important place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the court to apply for judicial review. It is generally agreed that 'legitimate expectation' gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then the decision-maker should justify the denial of such expectation by showing some overriding public interest. (See : Union of India and Ors. v. Hindustan Development Corporation and Ors., AIR 1994 SC 988)

9. While the discretion to change the policy in exercise of the executive power, when not trammeled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the *field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.""*

38. By not allowing the right to carry forward the CENVAT credit for not being able to file the form GST Tran-1 within the due date may severely dent the writ-applicants working capital and may diminish their ability to continue with the business. Such action violates the mandate of Article 19(1)(g) of the Constitution of India.

39. This High Court, in the case of *Indsur Global Ltd. v. Union of India, reported in 2014 (310) E.L.T. 833 (Gujarat)* = ***2014-TIOL-2115-HC-AHM-CX***, has held as under:

"34. By no stretch of imagination, the restriction imposed under sub-rule (3A) of Rule 8 to the extend it requires a defaulter irrespective of its extent, nature and reason for the default to pay the excise duty without availing Cenvat credit to his account can be stated to be a reasonable restriction. It leads to a situation so harsh and a position so unenviable that it would be virtually impossible for an assessee who is trapped in the whirlpool to get out of his financial difficulties. This is quite apart from being wholly reasonable, being irrational and arbitrary and therefore, violative of Article 14 of the Constitution. It prevents him from availing credit of duty already paid by him. It also is a serious affront

to his right to carry on his trade or business guaranteed under Article 19(1)(g) of the Constitution. On both the counts, therefore, that portion of sub-rule (3A) of rule must fail."

40. The liability to pay GST on sale of stock carried forward from the previous tax regime without corresponding input tax credit would lead to double taxation on the same subject matter and, therefore, it is arbitrary and irrational.

41. C.B.E. & C. Flyer No.20, dated 1.1.2018 had clarified as under :

"(c) Credit on duty paid stock : A registered taxable person. other than manufacturer or service provider, may have a duty paid goods in his stock on 1st July 2017. GST would be payable on all supplies of goods or services made after the appointed day. It is not the intention of the Government to collect tax twice on the same goods. Hence, in such cases, it has been provided that the credit of the duty/tax paid earlier would be admissible as credit."

42. Article 300A provides that no person shall be deprived of property saved by authority of law. While right to the property is no longer a fundamental right but it is still a constitutional right. CENVAT credit earned under the erstwhile Central Excise Law is the property of the writ-applicants and it cannot be appropriated for merely failing to file a declaration in the absence of Law in this respect. It could have been appropriated by the government by providing for the same in the CGST Act but it cannot be taken away by virtue of merely framing Rules in this regard.

43. In the result, all the four writ-applications succeed and are hereby allowed. The respondents are directed to permit the writ applicants to allow filing of declaration in form GST TRAN-1 and GST TRAN-2 so as to enable them to claim transitional credit of the eligible duties in respect of the inputs held in stock on the appointed day in terms of Section 140(3) of the Act. It is further declared that the due date

> contemplated under Rule 117 of the CGST Rules for the purposes of claiming transitional credit is procedural in nature and thus should not be construed as a mandatory provision. ”

11. Delhi High Court in a series of cases has expressed similar view as by Gujrat High Court. In its recent judgment in the case of **Krish Authomotors Pvt. Ltd. Vs UOI and others <u>2019-TIOL-2153-HC-DEL-GST</u>**, Delhi High Court has noted its various previous orders and directed as under:

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

12. We fully agree with findings of Hon'ble Gujrat and Delhi High Court noticed hereinabove and find no reason to take any contrary view. We are not in agreement with the cited judgment by the Revenue of Hon'ble Gujrat High Court in **Willowood Chemicals case (*Supra*)** as the Gujrat High Court itself in subsequent judgments and Delhi High Court in a number of judgments (as noticed hereinabove) have permitted petitioners (therein) to file TRAN-I Forms even after 27.12.2017. We also find that the Sub Rule (1A) added/inserted to Rule 117 w.e.f. 10.09.2018 has not been noticed in the said cited judgment by the Revenue, which goes to the roots of findings recorded by the Hon'ble Gujrat High Court. Thus all the petitions deserve to succeed and are hereby **allowed**.

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

No order as to costs.

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

November 04th, 2019
Vinay

Whether speaking/reasoned	***Yes/No***
Whether Reportable	***Yes/No***

***1.CWP-30949-2018 (**ADFERT TECHNOLOGIES PVT. LTD. V/S UNION OF INDIA AND OTHERS)

2.CWP-32961-2018(M/S RP JHUNTHRA AUTOWHEELS PVT. LTD. V/S UNION OF INDIA AND OTHERS)

3. CWP-30968-2018 (GODAWARI AGRO CHEM COMPANY V/S UNION OF INDIA AND OTHERS)

4. CWP-33004-2018 (M/S RP JHUNTHRA MOTORS PVT. LTD. V/S UNION OF INDIA AND OTHERS)

5.CWP-29536-2018 (M/S KAPOOR INTERNATIONAL, FARIDABAD V/S UNION OF INDIA AND OTHERS)

6.CWP-395-2019 (GS ENGITECH PVT. LTD V/S UNION OF INDIA AND OTHERS)

7.CWP-451-2019 (GS RADIATORS LTD V/S UNION OF INDIA AND OTHERS)

8.CWP-1074-2019 (M/S M.K. TRADERS V/S UNION OF INDIA AND OTHERS)

9.CWP-1187-2019 (M/S SHIVA GLASS HOUSE THROUGH ITS PROPRIETOR MOHAN LAL V/S UNION OF INDIA AND ORS)

10.CWP-1239-2019 (M/S ATUL COAL TRADERS THROUGH ITS PROPRIETOR V/S UNION OF INDIA AND OTHERS)

11.CWP-1299-2019*(* M/S SHRI GANPATI TRADER V/S UNION OF INDIA AND OTHERS)

12. CWP-1596-2019*(* M/S D.K. POLY INDUSTRIES V/S UNION OF INDIA AND ORS

13.CWP-1702-2019 *(M*/S JAGSONPAL PHARMACEUTICALS LIMITED FARIDABAD V/S UNION OF INDIA AND OTHERS

14.CWP-1976-2019 (RASANDIK ENGINEERING INDUSTRIES LTD V/S COMMISSIONER OF GOODS AND SERVICE TAX, LUDHIANA)

15.CWP-967-2019*(* M/S ATUL GLOBAL PVT LTD V/S UNION OF INDIA AND OTHERS)

16.CWP-3265-2019 *(* M/S DADA MOTORS PVT LTD V/S UNION OF INDIA AND ORS)

17.CWP-5977-2019 (M/S HANSON AGRO LIMITED JALANDHAR V/S UNION OF INDIA AND ORS)

18.CWP-5983-2019*(M*/S DEEPAK INDUSTRIES, V/S UNION OF INDIA AND ORS)

19.CWP-5984-2019(M/S RATTAN CHAND MOHIT KUMAR V/S UNION OF INDIA AND ORS)

20.CWP-6008-2019 *(M*/S CONTINENTAL CORRUGATORS PVT LTD V/S UNION OF INDIA AND ORS)

21.CWP-3971-2019 (ARGL LIMITED V/S UNION OF INDIA AND OTHERS)

22.CWP-4014-2019 *(*ARGL LIMITED V/S UNION OF INDIA AND OTHERS)

23.CWP-4418-2019 *(* M/S VINOD OIL AND GENERAL MILLS V/S UNION OF INDIA AND OTHERS)

24.CWP-4648-2019 (M/S AJAY HARDWARE INDUSTRIES PVT LTD V/S UNION OF INDIA AND OTHERS)

25.CWP-4842-2019 (M/S THREE STAR ELECTRIC MOTORS, JALANDHAR V/S UNION OF INDIA AND OTHERS)

26.CWP-5574-2019 (M/S SHARMA ENTERPRISES V/S UNION OF

INDIA AND OTHERS)

27.CWP-8351-2019 (M/S ATMA RAM SONS V/S UNION OF INDIA AND ORS)

28.CWP-8406-2019(M/S IFB INDUSTRIES LTD V/S UNION OF INDIA AND OTHERS)

29.CWP-4544-2019 (M/S DADA MOTORS PVT. LTD. V/S UNION OF INDIA AND OTHERS)

30. CWP-4689-2019 (M/S RAM AND COMPANY V/S UNION OF INDIA AND ORS)

31.CWP-4782-2019 (M/S SANCHIT TRADING COMPANY V/S UNION OF INDIA AND OTHERS)

32.CWP-5394-2019 (M/S DEEP STEELS V/S UNION OF INDIA AND ORS)

33.CWP-5397-2019 (M/S CHIRAG TRADING COMPANY V/S UNION OF INDIA AND ORS)

34.CWP-5703-2019 (M/S SATIA INDUSTRIES LIMITED V/S UNION OF INDIA AND OTHERS)

35.CWP-6124-2019 (M/S GODREJ AND BOYCE MANUFACTURING COMPANY LIMITED V/S UNION OF INDIA AND OTHERS)

36.CWP-6201-2019 (M/S. SWASTIK AGRI SOLUTION CO. V/S UNION OF INDIA AND ORS.)

37.CWP-6341-2019 (M/S. STAR AGRICARE V/S UNION OF INDIA AND ORS.)

38.CWP-6590-2019 (M/S. PHARMA LOGISTICS PANCHKULA V/S UNION OF INDIA AND ORS.)

39.CWP-6939-2019 (PRECISION TECH ENTERPRISES V/S UNION OF INDIA AND OTHERS)

40. CWP-6988-2019 (TOKAI IMPERIAL RUBBER INDIA PRIVATE LIMITED V/S UNION OF INDIA AND OTHERS)

41. CWP-6995-2019(GLOBAL AUTOMOTIVE COMPONENTS (P) LIMITED V/S UNITED OF INDIA AND OTHERS)

42. CWP-7060-2019 (M/S ANANDA HOSPILITIES, V/S UNION OF INDIA AND ORS)

43. CWP-7652-2019(M/S SEHGAL AUTOMOBILES, FARIDABAD V/S UNION OF INDIA AND OTHERS)

44. CWP-7798-2019 (BMR POLYMERS PVT. LTD. GURGAON V/S UNION OF INDIA AND OTHERS)

45. CWP-8122-2019(MAHARANI INNOVATIVE PAINTS PVT. LTD. FARIDABAD V/S UNION OF INDIA AND OTHERS)

46. CWP-8142-2019 *(*SARVO TECHNOLOGIES LIMITED FARIDABAD V/S UNION OF INDIA AND OTHERS)

47. CWP-8187-2019 (MAHARANI PAINTS PVT. LTD. FARIDABAD V/S UNION OF INDIA AND OTHERS)

48. CWP-8594-2019 *(*M/S AGGARSAIN AGROPEST PRIVATE LIMITED V/S STATE OF PUNJAB AND OTHERS)

49. CWP-8966-2019 *(*M/S. MSG ALL TRADING INTERNATIONAL PVT. LTD V/S UNION OF INDIA AND ORS)

50. CWP-9173-2019 *(*M/S DONALSON INDIA FILTER SYSTEMS PVT LTD V/S UNION OF INDIA AND ORS)

51. CWP-10252-2019 (M/S AJAY KUMAR ASHOK KUMAR V/S UNION OF INDIA AND OTHERS)

52. CWP-10735-2019*(*AGGARWAL ENTERPRISES V/S UNION OF INDIA AND OTHERS)

53. CWP-10915-2019 *(*UNIVERSAL MOTORS V/S UNION OF INDIA AND OTHERS)

54. CWP-10987-2019 *(*SINGLA AND SONS, HISAR HARYANA V/S UNION OF INDIA AND OTHERS)

55.CWP-12365-2019 *(*M/S ARVIND BEAUTY BRANDS RETAIL PVT. LTD V/S UNION OF INDIA AND OTHERS)

56. CWP-12953-2019*(*SAVITRI STEEL INDUSTRIES V/S UNION OF INDIA AND OTHERS)

57. CWP-9322-2019 *(*SHYAM ENTERPRISES THROUGH ITS PROPRIETOR V/S UNION OF INDIA AND OTHERS)

58. CWP-9627-2019 *(*EPL LOGISTICS PRIVATE LIMITED V/S UNION OF INDIA AND OTHERS)

59. CWP-9918-2019 *(*M/S RATHI TMT SARIA PVT.LTD V/S UNION OF INDIA AND ORS)

60. CWP-9981-2019 *(*M/S KAY INTERNATIONAL PVT LTD V/S COMMSSIONER OF GOODS AND SERVICE TAX)

61. CWP-14231-2019 (TALBROS ENGINEERING LIMITED V/S UNION OF INDIA AND OTHERS)

62. CWP-14629-2019 (M/S AGRSON CYCLES (INDIA) V/S UNION OF INDIA AND ORS.)

63. CWP-15269-2019(M/S G.H.MOTOR COMPANY V/S UNION OF INDIA AND OTHERS)

64. CWP-15286-2019 (M/S UNIQUE MOTORS V/S UNION OF INDIA AND OTHERS)

65. CWP-15578-2019(M/S MINHAS AUTOMOBILE ENGINEERS V/S UNION OF INDIA AND OTHERS)

66. CWP-15665-2019(M/S CM ASSOCIATES PVT. LTD. V/S UNION OF INDIA AND OTHERS)

67. CWP-16017-2019 (INTERNATIONAL ENGINEERS V/S UNION OF INDIA AND OTHERS)

68. CWP-16206-2019(ASK HOME FURNISHING PRIVATE LIMITED V/S UNION OF INDIA AND ORS)

69. CWP-17621-2019 (NARESH DISTRIBUTORS V/S UNION OF INDIA AND ORS.)

70. CWP-17699-2019 (M/S DADA MOTORS V/S UNION OF INDIA AND OTHERS)

71. CWP-19516-2019 (M/S P.P. ROLLING MILLS MANUFACTURING CO. PVT. LTD. V/S UNION OF INDIA AND OTHERS)

72. CWP-19965-2019 (M/S MARKANDA AUTOMOBILES V/S UNION OF INDIA AND ORS)

73. CWP-25283-2019 (M/S TRIUMPH AUTO PARTS DISTRIBUTORS PVT LTD GURGAON V/S UNION OF INDIA AND OTHERS)

74. CWP-27885-2019 (M/S BHARAT TOOLS CO V/S UNION OF INDIA AND ORS)

75. CWP-28085-2019 (M/S Y K INDUSTRIES V/S UNION OF INDIA AND ORS)

76. CWP-28408-2018 (HARPAL SINGH & ANR V/S PUNJAB MANDI BOARD PATIALA & ORS)

77. CWP-28469-2019 (M/S BANSAL ENGINEERING CO V/S UNION OF INDIA AND OTHERS)

78. CWP-27903-2019(M/S GANPATI STEELS V/S UNION OF INDIA

AND ORS)

79. CWP-27919-2019 (M/S VIJAY SHANKER CHANDAK AND CO V/S UNION OF INDIA AND ORS)

80. CWP-21038-2019 *(*M/S SUNDER MARKETING ASSOCIATES PVT. LTD. V/S UNION OF INDIA AND OTHERS)

81. CWP-20615-2019 *(*M/S INODAYA FOODS PVT. LTD. V/S UNION OF INDIA AND OTHERS)

82. CWP-27522-2019 *(*M/S WINGS AUTOMOBILES PRODUCTS PVT. LTD. V/S UNION OF INDIA AND OTHERS)

83. CWP-4557-2019 *(*VSB LOGISTIC COMPANY V/S STATE OF PUNJAB AND ORS.)

84. CWP-17676-2019 *(* OMP INDIA PRIVATE LIMITED V/S THE COMMISSIONER OF GOODS AND SERVICE TAX)

85.CWP-21751-2019 *(*M/S ESSEN AUTO FORGE PVT LTD V/S UNION OF INDIA AND OTHERS)

86.CWP-21902-2019 *(*M/S ESSEN FORGE PVT. LTD. V/S UNION OF INDIA AND OTHERS)

87.CWP-21992-2019 *(*M/S SIDHARTH ASSOCIATES V/S UNION OF INDIA AND OTHERS)

88.CWP-24483-2019 *(*M/S SURINDER ARORA ENTERPRISES V/S UNION OF INDIA AND OTHERS)

89. CWP-24551-2019 (M/S WELWORTH ELECTRIC COMPANY LTD V/S UNION OF INDIA AND OTHERS)

90. CWP-24809-2019 *(*M/S DAWA BAZAR V/S STATE OF PUNJAB AND ORS.)

91. (**CWP-27426-2019 *(***M/S NAVYUG NAMDHARI ENTERPRISES V/S UNION OF INDIA AND ORS)

92. CWP-27450-2019 *(*M/S NAVYUG BICYCLE INDUSTRIES V/S UNION OF INDIA AND OTHERS)

93. CWP-25303-2019*(*M/S WINNER PHARMACEUTICALS V/S STATE OF PUNJAB AND OTHERS)

94. CWP-27917-2019 *(*M/S BANSAL SONS **V/S** UNION OF INDIA AND ORS)

95. CWP-29852-2019 *(*NEC ROTOFLEX PACKAGING CORPORATION **V/S** UNION OF INDIA AND OTHERS)

96. CWP-27960-2019 *(*M/S AVM FORGING **V/S** ;UNION OF INDIA AND ORS)

97. CWP-27884-2019 (M/S BHURIWALE MFRS AND TRADERS **V/S** UNION OF INDIA AND ORS)

98. CWP-26642-2019 *(*M/S SANT FURNITURE AND HOME APPLIANCES **V/S** UNION OF INDIA AND OTHERS)

99. CWP-28165-2019 *(*M/S AMAN CYCLES **V/S** UNION OF INDIA AND ORS)

100. CWP-27740-2019 (M/S LAJPAT RAI STEELS **V/S** UNION OF INDIA AND ORS)

101. CWP-27891-2019 *(*M/S NATIONAL ENGINEERING CO **V/S** UNION OF INDIA AND ORS)

102. CWP-28203-2019 (M/S GROUPE SEB INDIA PRIVATE LIMITED **V/S** UNION OF INDIA AND OTHERS)