

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

926 WRIT PETITION NO.5878 OF 2020

**GAYATRI AGRO AGENCIES
VERSUS
THE UNION OF INDIA AND OTHERS**

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Advocate for Petitioner : Mr. Sikchi Aditya N.
ASGI for Respondent Nos.1 & 6 : Mr. A. G. Talhar.
Advocate for Respondent Nos.2, 3, 5 : Mr. Dawalkar P. P. And
Mr. Kothari P. P.

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**CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.**

DATE : 07.09.2021

PER COURT :-

1. The petitioner-establishment has put forth prayer

clauses "A", "B" and "C" as under :

"A) The Hon'ble High Court may be pleased to issue a writ, order or direction in the nature of writ and thereby direct the Respondents to permit the petitioner to submit its revised FORM GST-TRAN-1 return electronically on the common portal and allow the petitioner to upload the revised FORM GST TRAN-1 as per the provisions of Rule 120-A of the Central Goods and Service Tax Rules, 2017 by opening the electronic/common portal for that purpose."

"B) The Hon'ble High Court may be pleased to issue a writ, order or direction in the nature of writ and thereby direct the Respondents to permit the petitioner to tender the revised FORM GST TRAN-1 form manually to the authorities as per the provisions of Rule 120-A of Central Goods and Service Tax

Rules, 2017 and thereafter process the claim of the petitioner for the Input Tax Credit in accordance with law."

"C) The Hon'ble High Court may be pleased to issue a writ, order or direction in the nature of writ and thereby quash and set aside the order dated 12.06.2020 of the Respondent No.5 informing the decision of disapproval of the claim/grievance of the petitioner."

2. The learned advocate submits, on instructions, that prayer clause "D" as regards challenge to Rule 117 of the Central Goods and Service Tax Rules, 2017 and prayer clause "F" in relation thereto, are being given up by the petitioner and they may be treated as deleted from the prayers. We record the said statement and prayer clauses "D" and "F" stand deleted.

3. We have considered the submissions of the learned advocates for the respective sides. The grievance of the petitioner is that after the introduction of the Central Goods and Service Tax Act, 2017 and Central Goods and Service Tax Rules, 2017, there were several glitches in the online submission of forms software owing to the new regime. Under the new regime, the establishments like the petitioner were permitted to carry forward existing accrued CENVAT credit upto 30.06.2017 under Section 140 of the Act.

4. On 28.08.2017, the petitioner uploaded its form GST TRAN-1 claiming a credit of Rs.66,45,387/- under the Value Added Tax (VAT) and Rs.7,77,489/- under the Excise Act. The form was uploaded in view of the acknowledgment by the GST Department. When the petitioner checked from the Dasboard / Homepage, the petitioner read the message as "pending invoices" (these will be added after validation). The petitioner realizes that the form has not been properly uploaded due to the glitches in the portal of the GST. The petitioner, therefore, lodged complaints as regards the glitches and the copies of the same are placed on record. After lodging multiple complaints on 09.12.2017, 27.12.2017 and 30.12.2017, the petitioner received a communication on

2. 01.2018 and 08.01.2018 from the GSTN Portal that the grievance of the petitioner cannot be resolved as the period for uploading form GST TRAN-1 return had expired.

5. In view of the above, the petitioner attempted a manual submission of its revised form GST TRAN-1 and informed the Department about the technical glitches in the portal, on

8. 01.2018 and 20.02.2018. Since his grievance was not

redressed, the petitioner approached this Court by preferring Writ Petition No.3127 of 2018. By order dated 23.04.2018, respondent No.4 was directed to take a decision on the representation of the petitioner tendered on 20.02.2018 within four (4) weeks. Response to this order is by the communication at page No.83 of the petition paper book by which the Superintendent CGST and Central Excise, Amalner Range informed the petitioner as under :

"To,
M/s. Gayatri Agro Agency, Parola.
Please refer to your application to re-open Tran-1, for submission of excise claim.
"In this regard it is informed that Tran-1 claims filed by M/s Ram Agro Agencies, M/s Vijay Agro Centre & M/s Gayatri Agro Agency has not been approved by the ITGRC Committee" This is submitted for information please.
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Regards
Superintendent
CGST & Central Excise
Amalner Range, Jalgaon Division"

6. The grievance of the petitioner is that, on the one hand, his entire TRAN-1 form could not be uploaded due to the technical glitches in the GSTN Portal and on the other hand, the respondent authorities are not allowing the petitioner, either to revise the proposal or submit the hard copy of the proposal, manually. Consequentially, the accrued CENVAT

credit available to the petitioner has not been allowed to be utilized as the form of the petitioner was not appropriately loaded due to the glitches in the GSTN Portal.

7. The learned advocate representing the GST authorities, relies upon the affidavit-in-reply filed by Commissioner, Central GST and Central Excise Commissionerate, Nashik dated 24.08.2021. It is contended that the petitioner cannot be allowed to file revised returns under form GST TRAN-1 after it was once filed. Such opportunity to file revised TRAN-1 has been given once, which is clear from paragraph No.28 of the petition. We find from paragraph No.28 that the petitioner contends that it could not file revised returns under Rule 120-A of the Act, as the GSTN Portal had suffered glitches. Thereafter, the petitioner has only been making representations and complaints and had never filed a revised return under form GST TRAN-1.

8. The petitioner submits that he re-uploaded his form TRAN-1 on 10.11.2017. Owing to this successful uploading, his returns have been tendered, without any glitches for the first time. Now, the petitioner desires to submit a revised form

which is permissible under Rule 120-A. The Department is treating the said revised form as being a Second Revision sought by the petitioner, which is apparently impermissible in law.

9. We, therefore, noticed the controversy that after the petitioner first failed in making a complete uploading of the TRAN-1 form, he could succeed in uploading the said form without glitches on 10.11.2017. The revision that is sought, is not being accepted by the authorities. His first revision is dated 08.01.2018, which was not being accepted online and, therefore, he tendered the same manually to the Superintendent GST Office, Jalgaon. This is not being accepted on the ground that it amounts to a Second Revision and the Rules do not permit a Second Revision.

10. In the backdrop of these factors, we called upon the learned advocate representing the GST and Central Excise Authorities to point out from the affidavit-in-reply or through any document, as to which was the first revision filed by the petitioner. On the basis of the record, the learned counsel submits that the Department has been treating the uploading

of the TRAN-1 form online which was a second attempt by the petitioner, to be the first revision. We find from the contents of the TRAN-1 form that the successful attempt of the petitioner in uploading the form online was nothing new but the exact copy of the form which he had attempted to submit online for the first time and in which effort, he had been unsuccessful because of the glitches in GSTN Portal.

11. The reproduced portion of the order passed by the Superintendent CGST and Central Excise, Amalner Range is an order based on the reference of the ITGRC Committee that the TRAN-1 claims filed by the petitioner has not been approved. No reasons are set out for disapproving the TRAN-1 claims. In the absence of reasons, the order cannot be sustained, as it reflects non-application of mind.

12. In view of the above, this petition is partly allowed. The impugned order dated 12.06.2020 communicated by respondent No.5 is quashed and set aside.

13. We permit the petitioner to tender the revised form GST TRAN-1, online as well as by tendering a copy manually to respondent No.4 within two (2) weeks' time. We are

permitting the petitioner to submit the revised form manually, in view of the judgment delivered by the Division Bench of the Punjab and Haryana High Court in ***Adfert Technologies Pvt. Ltd. Vs. Union of India 2019 SCC Online P & H 5701*** and the judgment delivered by the learned Division Bench of the Gujarat High Court in ***Siddharth Enterprises Vs. The Nodal Officer, 2019 (29) G.S.T.L. 664***. Needless to state, respondent No.4 would decide the revised form filed by the petitioner online / manually in accordance with the procedure as is prescribed.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-