

## CASE DETAILS

PRIMARY DETAILS							
Main Number	WP 1922/2020	SR Number	WPSR 2613/2020				
Petitioner	M/s.Sri G K Exim,	Respondent	The Deputy Commissioner,				
Petitioner Advocate	C SANJEEVA RAO	Respondent Advocate	GP FOR COMMERCIAL TAX AP				
Case Category	NON-SERVICE	District	VISAKHAPATNAM				
Filing Date	28/01/2020	Registration Date	28/01/2020				
Listing Date	13/08/2020	Case Status	DISPOSED				
Disposal Date	13-08-2020	Diposal Type	DISPOSED OF NO COSTS				
Purpose	FOR PRONOUNCEMENT OF JUDGMENT	Scrutiny Officer name	SRAO				
Hon'ble Judges	The Honourable Sri Justice C.PRAVEEN KUMAR,The Honourable Smt Justice LALITHA KANNEGANTI						
Category							
Category	WP	Sub Category	COMMERCIAL TAXES (MISC.MATTERS)				
Sub Sub Category	-						
IA DETAILS							
IA Number	Filing Date	Advocate Name	Misc.Paper Type	Status	Prayer	Order Date	Order
IA 1/2020	28/01/2020	C SANJEEVA RAO	Direction Petition	Pending	IA PRAYER	-	
USR Details							
USR Number	Advocate Name	USR Type	USR Filing Date	Remarks			
WPU SR 23923/2020	M V J K KUMAR (SR SC FOR CEC SER TAX )	Material Paper	28/07/2020	PENDING FOR SCRUTINY			
WPU SR 22891/2020	M V J K KUMAR (SR SC FOR CEC SER TAX )	Material Paper	24/06/2020	PENDING FOR SCRUTINY			
WPU SR 23696/2020	C SANJEEVA RAO	Neat Copy	24/07/2020	PENDING FOR SCRUTINY			
WPU SR 23682/2020	C SANJEEVA RAO	MEMO	24/07/2020	PENDING FOR SCRUTINY			
WPU SR 22708/2020	C SANJEEVA RAO	MEMO	22/06/2020	PENDING FOR SCRUTINY			
CONNECTED MATTERS							
Connected Case Number							
VAKALATH							
Advocate Code	Advocate Name	P/R No.	Remarks				
17401	M V J K KUMAR (SR SC FOR CEC SER TAX )	6(R)	-----				
15514	GP FOR COMMERCIAL TAX (AP)	2(R)	-----				
15514	GP FOR COMMERCIAL TAX (AP)	4(R)	-----				
20370	(ASST SOLICITOR GENERAL OF INDIA)	3(R)	-----				
15514	GP FOR COMMERCIAL TAX (AP)	5(R)	-----				
LOWER COURT DETAILS							
PRAYER							
<p>to issue Writ of Mandamus or any other appropriate writ or order or direction declaring 1the inaction of the Respondents to reopen the portal immediately enabling the petitioner to submit its GST TRAM1 Form in the GSTN Portal in erms of Section 140 of the CGST and APSGST Act 2017 or 2in tilt alternative permit the petitioner to submit GST TRAN1 manually and to direct the respondent to consider GST TRAN1 so filed and rant the credit in accordance with law or 3further alternative direct the 1 and 4th respondents to grant a refund of VAT credit ofRs 1 92 095/which is entitled by the petitioner as per Section 1401 and3 of the CGST Act 2017 as arbitrary contrary to the provisions of the GST Act 2017 contrary to Article 14 191g c f the Constitution of India and also the same is in violation of principles of natural justice and direct the respondents not to take any penal action against the petitioner and consequently direct the respondents to redress the grievance of the petitioner forthwith and pass</p>							
PETITIONER(S)							
S.No	Petitioner(S) Name						
1	M/s Sri G K Exim 11189A10 Flat No 411 Ramakrishna Residency Prahladapuram Visakhapatnam530027 Rep by its Managing Partner Mr GopinadhNidra						
RESPONDENT(S)							
R.No	Respondent(S) Name						
1	The Deputy Commissioner Nodal Officer for CGST IT Grievance Redressal 0/o The Chief Commissioner of Central Tax GST Bhavan Port Area Visakhapatnam530035						
2	The Assistant Commissioner ST Gajuwaka Circle Visakhapatnam						
3	The Union of India Rep by the Principal Secretary Ministry of Finance Department of Revenue 136A North Block New Delhi110001						
4	The Chief Commissioner State Tax Andhra Pradesh Edupugallu Nr Vijayawada Krishna District						
5	The State of Andhra Pradesh Rep by its Principal Secretary Revenue CT Department Secretariat Complex Amaravati						
6	Goods and Services Tax Council Through its Chairman Goods and Services Tax Secretariat 5th Floor TowerV JeevanBharathi Building Janpath Road Connaught Place New Delhi						
ORDERS							
Order on	Judge Name	Date of Orders	Order Type	Order Details			
WP 1922/2020	The Honourable Sri Justice C.PRAVEEN KUMAR,The Honourable Smt Justice LALITHA KANNEGANTI	2020-08-13	Final Order	View			

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**  
**AND**  
**THE HON'BLE SMT JUSTICE LALITHA KANNEGANTI**  
**W.P. No. 1922 of 2020**

**ORDER:** *(Per Hon'ble Sri Justice C.Praveen Kumar)*

1) The present Writ Petition came to be filed seeking issuance of a writ of *Mandamus* to declare the inaction of the Respondents to reopen the portal immediately enabling the Writ Petitioner to submit its GST TRAN-1 Form in the GSTN Portal in terms of Section 140 of the CGST and APSGST Act, 2017; or in the alternative, permit the Writ Petitioner to submit GST TRAN-1 manually with a direction to the Respondents to consider the same in accordance with law. It is further pleaded that, a direction may be given to Respondent no. 1 and 4 to grant refund of VAT credit of Rs.1,92,095/-, to which the Writ Petitioner is entitled for.

2) The facts, in issue, are that:

(i) The Writ Petitioner is a partnership concern doing business in pulses and turmeric registered under the APSGST Act 2017 and CGST Act, 2017 bearing GSTI No. 37ACSFS7596P1ZL. In short, the request of the Writ Petitioner is, to direct the Respondents to accept his Form GST TRAN-1 enabling him to claim transitional credit of the eligible taxes in respect of the excess input tax credit of Rs.1,92,095/- on the appointed day i.e., 01<sup>st</sup> July, 2017 in terms of Section 140(1) and (3) of the

APSGST / CGST Act, 2017 read with Rule 117 of the Central Goods and Services Tax Rules, 2017.

- (ii) It is pleaded that, the Writ Petitioner could not upload the Form GST TRAN-1 due to technical glitches in terms of poor internet connectivity and other technical difficulties on the GST common portal. It is further pleaded that, the Writ Petitioner also met the 1<sup>st</sup> Respondent being the Nodal Officer from time-to-time and also addressed letters to the concerned for allowing him to file online Form GST TRAN-1 in terms of the decision of the GST Tax Council and Circular, dated 03.04.2018. The Writ Petitioner claims to have addressed letters to the 1<sup>st</sup> Respondent on 27.12.2019, but, nothing turned out from the same. The Writ Petitioner placed on record number of judgments to show that, when the petitioner was not able to gain access to the portal due to technical difficulties or due to ignorance of the usage of technology, the courts permitted the petitioners therein to apply manually. In other words, his plea is that, technology has been added to the system for the benefit and convenience of the tax payers, but it should not be subservient to the purpose and hence the impediments, if any, should not make the Writ Petitioner servants of the technology. He further pleads that, the authorities have time and again extended the last date for claiming input credit, but, his

efforts to upload the Form proved futile for many a reasons. Hence, the present Writ Petition is filed seeking manual submission of Form GST TRAN-1.

3) The same is seriously opposed by the learned Counsel for the Respondents by placing the Judgment of the Division Bench of the Madras High Court in ***P.R. Mani Electronics v. Union of India*** [W.P. No. 8890 of 2020]. Insofar as the judgment delivered by this court is concerned, the Counsel for the Respondents would contend that, since the Petitioner therein was illiterate, this Court permitted him to submit GST TRAN-1 manually, but, the instant case stands on an altogether different footing.

4) In reply, the Counsel for the Writ Petitioner placed on record photostat copies of screen shots of GSTN common portal indicating the efforts made by the Writ Petitioner trying to submit TRAN-1 Form.

5) In order to deal with the issue raised, it is to be noted that, Section 40 of SGST Act provides for transfer of the amount of Value Added Tax Credit carried forward under the APVAT Act, 2005 to the GST regime, which reads as under:-

**“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, credit of the amount of Value Added Tax 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.....”.***

6) Rule 117 of the SGST Rules, 2017 was introduced to provide for the mode and manner in which such credit is to be carried forward. The relevant portion of the Rule reads as under:

***“117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day:***

***(1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in Form GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit 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.....”***

7) Rule 117 of the SGST Rules prescribed a period of 90 days from the appointed day to file Form GST TRAN-1 mentioning the amount of transitional input tax credit

claimed by the registered person. The Form GST TRAN-1 is to be filed electronically on the common portal within the time fixed in the Rule initially or extended by notifications.

8) Though the prescribed time of 90 days from the appointed date expired on 29.09.2017, but the Respondent authorities have been extending time for uploading VAT Credit in Form TRAN-1 from time-to-time.

9) The averments in the affidavit filed in support of the Writ Petition shows that, the Writ Petitioner has been trying to upload the said form, but was unsuccessful in doing so for various reasons, like poor internet connection and the technical difficulties of GSTN common portal. The contents of the affidavit also makes it clear that the Writ Petitioner met the Nodal Officer from time-to-time explaining his grievances in uploading the Form TRAN-1 apart from addressing letters to the concerned. Therefore, the argument of the Standing Counsel that the Writ Petitioner has not come forward with a genuine reason seeking submission of application manually may not be correct.

10) In W.P. No. 3298 of 2019, a similar issue came up before the Division Bench of this Court for consideration. Relying upon the judgments in **Uninav Developers Pvt Ltd., v. Union of India & Others** [2019-VIL-367-DEL], **Bhargava Motors v. Union of India** [2019 SCC Online Del 8474-2019-VIL-218-DEL], **Kusum Enterprises Pvt. Ltd. V. Union of India**

[WP (C) 7423/2019] and **Sanko Gosei Technology India Pvt. Ltd. V. Union of India & Others** [WP(C)7335/2019 – 2019-VIL-341-DEL], the Court disposed of the writ petition, on 13.08.2019, directing the respondents to either open the portal so as to enable the petitioner to again file the Form GST TRAN-1 electronically or in the alternative, accept the Form GST TRAN-1 presented manually by fixing a cut of date and process the claim in accordance with law.

11) The Judgment delivered in W.P. No. 3298 of 2019 was followed by another Division Bench in W.P. No. 15769 of 2019, to which one of us was a party.

12) Having regard to the judgments referred to above, this Writ Petition is **disposed of** in terms thereof directing the respondents concerned to permit the Writ Petitioner to submit GST TRAN-1 Form electronically or, in the alternative, manually, by fixing a cut off date, within a period of 30 days from the date of receipt of judgment, in which event, the same may be dealt with, in accordance with law. No order as to costs.

13) Consequently, miscellaneous petitions pending, if any, shall stand closed.

---

**JUSTICE C.PRAVEEN KUMAR**

---

**JUSTICE LALITHA KANNEGANTI**

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**  
**AND**  
**THE HON'BLE SMT JUSTICE LALITHA KANNEGANTI**

**W.P. No. 1922 of 2020**  
*(Per Hon'ble Sri Justice C.Praveen Kumar)*