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**CORAM : R. D. DHANUKA &
S. G. MEHARE, JJ.**

DATED : 13/04/2022.

ORAL JUDGMENT :

1. Writ Petition No. 13347/2019 is not on board. By consent of parties, taken on board.

2. Rule. Mr. A.G. Talhar, learned ASG and Mr.PP. Dawalkar waive service for respondent Nos. 1 and 2, in respective matters. The respective learned AGP waives service for respondents State. By consent of parties, Rule is made returnable forthwith. This bunch of writ petitions is being disposed of by a common order in view of the identical issue involved.

3. The learned counsel for the parties jointly state that the facts in all these petitions are almost identical and the judgment that would be delivered by this Court in Writ Petition No. 1690/2019 would apply to the other matters in this bunch of writ petitions. The statement is accepted. We are accordingly dealing with the facts in Writ Petition No. 1690/2019.

4. By this petition under Article 226 of the Constitution of

India, the petitioner prays for a declaration that Rule 117 and Rule 120A of the Central Goods and Services Tax Rules, 2017 are ultra virus the Central Goods and Services Tax Act, 2017 and to be struck down. The petitioner also seeks writ of mandamus and/or any other appropriate writ, order or direction to direct the respondents to allow the revision of the Form TRAN-1 and Form TRAN-2 and to allow the petitioner to take credit under section 140(3) on the invoices missed out during the initial filing.

5. It is the case of petitioner that the petitioner filed Form TRAN-1, but inadvertently did not claim approximately Rs.13,17,956/- in the said Form TRAN-1. There was no option available to the petitioner to revise the Form TRAN-1 after 27th December, 2017. There was also further condition of revising the Form only once within the due date. The Form TRAN-1 was accordingly not accepted. According to the petitioner, since the petitioner missed out the claim of approximately Rs.13,17,956/-, the petitioner prayed for permission by making representation to correct the said mistake which was not allowed. The petitioner accordingly filed this writ petition inter alia challenging the virus of Rule 117 and 120A of the Central Goods and Services Tax Rules, 2017.

6. Mr. Patkar, learned counsel for the petitioner placed

reliance on the judgment in the case of **Nelco Limited Vs. Union of India, 2020 SSC OnLine Bom 437** and also on section 140 and Rule 117 (1) and would submit that the time prescribed under Rule 117 (1) is directory. He submits that though the petitioner has sought credit of the tax credit recoverable under the old regime by following the said procedure under Rule 117 r/w. 140, the respondents have not entertained the said application.

7. Mr. Patkar, learned counsel for the petitioner invited our attention to the unreported judgment of this Court dated 5th November 2020 in the case of **Heritage Lifestyles and Developers and Private Limited Vs. The Union of India** delivered in Writ Petition (St) No. **3705/2020** and would submit that this Court in the said judgment has directed the respondents to accept the TRAN-1 Form filed by the petitioner and to give due credit of input tax credit in the electronic credit ledger/input tax credit of the petitioner within two weeks from the date of this order. He submits that this Court accordingly held that the time prescribed under Rule 117 (1) is directory and not mandatory. He submits that since the petitioner was not allowed to correct the Form TRAN-1, the petitioner may be granted liberty to correct Form TRAN -1 and to file separate TRAN- 2 for consideration on its own merits. He submits that insofar as the other petitioners are

concerned, the petitioners have not filed any of the form for claiming credit.

8. Mr. Talhar, the learned Assistant Solicitor General on behalf of respondent Nos. 1 and 2 and Mr. P.P. Dawalkar for respondent No. 2 in Writ Petition Nos. 2254/2020, 4453/2020 & 5283/2020 strongly placed reliance on the judgment of this Court in case of **Nelco Limited V. Union of India, 2020 SCC OnLine Bom 437** and more particularly para No. 86 in support of the submission that the constitutional validity of Rule 117 and section 140(1) is held intra virus.

9. Insofar as Writ Petition No. 1690/2019 is concerned, it is the case of the petitioner that the petitioner had already filed form TRAN-1 for transitional credit benefits under section 140 (3) of the Central Goods and Services Tax Act, 2017 and section 140 (3) of the Maharashtra Goods and Services Tax Act, 2017, respectively. However, since the petitioner missed out certain amount by mistake, the petitioner had applied for correction in Form TRAN-1 and thereafter, to file Form TRAN-2.

10. It is not in dispute that the challenge to the virus of section 140 and Rule 117 is negated by this Court in the case of Nelco Limited (supra).

11. Insofar as judgment of this court in the case of Heritage Lifestyles and Developers and Private Limited (supra) relied upon by the petitioners is concerned, a perusal of the said judgment indicates that the petitioner in that case was allowed to make such claim if the petitioner was otherwise eligible for credit of the amount. Considering those facts, this Court in the said judgment directed the respondents to accept the TRAN-1 filed by the petitioner and to give the due of input tax credit in the electronic credit ledger/input tax credit of the petitioner within two weeks from the date of the order. We are not inclined to accept the submissions of the learned counsel for the petitioners that by the said judgment, this Court had held that the provisions of section 140 and 117 are directory and not mandatory.

12. In our view, the interest of justice would be served if we allow the petitioner to correct Form TRAN-1 in Writ Petition No. 1609/2019 and to file Form TRAN-2 without prejudice to the rights and contentions of both the parties. The respondents shall consider the issue whether the Form TRAN-1 and other forms that would be filed/corrected by the petitioner can be entertained in accordance with the provisions of section 140 of the Central Goods and Services Tax Act, 2017 and Rule 117 (1) of the Central Goods and Services Tax Rules, 2017 or not.

13. Jurisdictional Assessing Authority shall also consider all the issues that would be raised by the petitioner including the issue on merits simultaneously. The authority shall also decide the effect of the judgments of this Court in the case of Heritage Lifestyles and Developers and Private Limited (Supra) and also Nelco Limited (supra) relied upon by the learned counsel for the parties, respectively. The said authority shall take appropriate decision within four weeks from today. This order shall be communicated within one week from the date of passing of the order. If the case of the petitioner is accepted by the authority, the reliefs as sought by the petitioner shall be granted within four weeks from the date of allowing such application. If the order is adverse against the petitioner, the petitioner would be at liberty to file appropriate proceedings.

14. Writ petitions are disposed of in aforesaid terms. Rule is made absolute in aforesaid terms. No order as to costs.

15. Parties to act on authenticated copy of this order.

SAG


[S. G. MEHARE, J.]

[R. D. DHANUKA, J.]

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