IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW-63-2020

M/s Tech Force Composites Pvt. Ltd.
GOA Unit, a Company registered
under the Companies Act, 1956,
having its factory at Plot no. 48-A,
Survey no. 73, Sao Jose De Areal
Salcete-Goa. Represented by its Power
of Attorney Holder Shri Dileep Naik,
age 74, Son of Shri B. G. Naik **… Petitioner**

Versus

1. Goods and Service Tax Council,
   5th Floor, Tower II, Jeevan Bharti Building,
   Janpath Road, Connaught Place,
   New Delhi – 110 001.

2. Central Board of Indirect Taxes
   and Customs, GST Policy Wing,
   North Block, New Delhi – 110 001.

3. The Commissioner, GST and
   Central Excise, GST Bhavan,
   EDC Complex, Plot No. 6,
   Patto Plaza, Patto Centre,
   Panaji, Goa 403 001

4. IT GRIEVANCE REDRESSAL
   COMMITTEE (ITGRC),
   Kalpvriksha, North Block, New Delhi. **… Respondents.**

Mr. Girish K. Sardessai, Advocate for the Petitioner.

Ms. Priyanka Kamat, Standing Counsel for the Respondents.

Coram:- M. S. SONAK &
SMT. M. S. JAWALKAR, JJ.

Date:- 16th December 2020

ORAL JUDGMENT (Per M. S. Sonak, J)

Heard Mr. Girish K. Sardessai, the learned Counsel for the petitioner, and Ms. Priyanka Kamat, the learned Standing Counsel for the respondents.

2. On the earlier occasions it was made clear that this petition will be taken up for final disposal at the stage of admission itself. Accordingly, the parties have also completed their pleadings in the matter.

3. Rule.

4. Rule is made returnable forthwith at the request of and with the consent of the learned Counsel for the parties.

5. The petitioner, who is an assessee, for the payment of GST, has instituted the present petition seeking, inter alia, the

following substantive reliefs:

> *"a. This Hon'ble Court be pleased to issue Writ of Certiorari and/or writ of Mandamus and/or any other appropriate writ and/or Direction as may be deemed appropriate quashing the order/findings dated 18.03.2020 of Respondent No. 4 the IT Grievance Redressal Committee (ITGRC) to the extent it is applicable to the Petitioner under category A2 clause (17.iv).*
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> *b. This Hon'ble Court be pleased to issue Writ of Certiorari and/or writ of Mandamus and/or any other appropriate writ and/or Direction as may be deemed appropriate directing Respondents to allow facility for revision of TRAN-1 in GSTN portal, and alternatively, the respondents be directed to rectify the error committed by Petitioner and update the correct figure on GST Portal in petitioners Credit ledger on GSTN Portal or in the alternative direct the respondents to refund to the Petitioner the CENVAT balance of Rs. 1,21,35,874/-."*

6. The grievance of the petitioner is that when the petitioners submitted its TRAN-1 Form on the online GST portal on 27.12.2017 against acknowledgment No.AA3011170204330, the petitioner realised that by mistake the last digit of the amount i.e. "4" remained to be added in the context of claiming appropriate credit. Therefore, instead of claiming credit in an amount of ₹1,34,84,304/- as stated in the Excise Return ER-1, the petitioner claimed credit of only ₹13,48,430/- thereby leading to a shortfall in an amount of ₹1,21,35,874/-. It is the case of the petitioner that such error was

clerical or typographical which was completely unintended and therefore, some mechanism ought to be provided to rectify the same.

7. The petitioner, in Writ Petition No.78 of 2019, instituted by him, had relied on the decision of this Court in ***O/E/N/India Ltd. & Anr v/s. Union of India & Others***[1], in which, the petitioner in the said petition, was permitted to make a representation to the Central Board of Indirect Taxes and Customs (CBIC), and the CBIC was directed to consider such representation, inter alia, for verification and the bonafide in the claim made by the petitioner.

8. Based upon the said decision, this Court, by order dated 27.09.2019 had granted liberty to the petitioner to make the necessary representations and directed the CBIC to dispose of such representation and in any case within two months from the date of its receipt.

9. The petitioner, accordingly, made a detailed representation, and the same was placed for consideration before the Income Tax Grievance Redressal Committee (ITGRC) of the CBIC in its meeting of 18th March 2020 at Delhi. This Committee, however, decided to reject the petitioner's representation as,

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[1] Writ Petition No.2086 of 2018 decided on 24.10.2018

according to the Committee, the error pointed out by the petitioner in the representation, may have been an error simpliciter but not an error apparent on the face of the record, which alone would qualify for an opportunity for correction. It is this decision dated 18.03.2020 which is now impugned by the petitioner by instituting the present petition.

10. Mr. Sardessai, the learned Counsel for the petitioner submits that it is clear that the error while submitting the TRAN-1 Form was an error apparent on the face of the record, as a result of typographical or clerical failings. He submits that the correct claim was made in the Excise Return ER-1. He submits that even the jurisdictional Commissionarate, whose opinion is transcribed in the impugned decision at paragraphs 17.4.4. had opined that the petitioner was actually entitled to the credit of ₹1,34,84,304/- as against the claim erroneously reflected in the TRAN-1 Form. He, therefore, submits that the impugned decision is liable to be set aside and the relief in terms of the decision of the Punjab & Haryana Court in the case of ***Adfert Technologies Pvt. Ltd. v/s. Union of India & Ors.***[2] is liable to be granted. He points out that the SLP against this decision has already been dismissed by the Hon'ble Apex Court. Besides, Mr. Sardessai relied on ***Bhargava Motors Vs. Union of India & Ors.***[3]***; Godrej & Boyce Mfg. Co. Ltd. v/s. Union of***

[2] CWP No.30949 of 2018 (O & M) decided on 04.11.2019
[3] W.P.(C)1280/2018 (Delhi High Court) decided on 13.05.2019

India & Ors.,[4]; Soni Traders v/s. Union of India & Ors[5]; Union of India & Ors. vs. Adfert Technologies Pvt. Ltd.[6]; Brand Equity Treaties Limited v/s. The Union of India & Ors[7], in support of his contentions in this petition.

11. Ms. Kamat the learned Standing Counsel for the respondents submitted that this is not at all a case of error apparent on the face of the record. She points out that this is not the case of transposition of values in the wrong column. She points out that in the present case, the claim was made in the correct column but it is the case of the petitioner that there was a shortfall in the amount of the claim. She submits that this cannot be regarded as an error apparent on the fact of record to even extend the scope of the ITGRC.

12. Ms. Kamat submits that there is no admission about the petitioner being entitled to the credit of ₹1,34,84,304/- since this position could not be verified because the petitioner did not declare the last digit of the CENVAT balance,i.e. "4" of ₹1,34,84,304/-. She submits that this is an additional ground as to why the petitioner, was denied the benefit of the ruling of this Court in ***O/E/N/India Ltd***

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4 W.P. (C) 8075/2019 (Delhi High Court) decided on 15.10.2019
5 W.P. (C) 12485/2019 (Delhi High Court) decided on 17.12.2019
6 Special Leave To Appeal (C) No.4408/2020 (Supreme Court of India) decided on 28.02.2020.
7 W.P. (C) 11040/2018 and C.M. No.42982/2018 decided on 05.05.2020.

(supra). She relied on ***ALD Automotive (P) Ltd. Vs. Commercial Tax Officer***[8]***; Assistant Collector of Customs v/s. Anam Electrical Manufacturing Co.***[9]***; Collector of Central Excise, Chandigarh v/s. Doaba Cooperative Sugar Mills Ltd Jalandar***[10] and ***JCB India Limited v/s. Union of India & others***[11]***,*** in support of her submission that this petition may be dismissed.

13. The rival contentions now fall for our determination.

14. In the instant case, there is no dispute that the petitioner, while submitting its TRAN-1 Form on the online GST portal on 27.12.2017, claimed the credit in an amount of ₹1,34,84, 30/-. This means that there was an omission to refer to the last digit "4", even though, in Excise Return ER-1, the petitioner, had quite clearly claimed the credit in an amount of ₹1,34,84,304/-.

15. The Income Tax Grievance Redressal Committee of CBIC, has regarded the aforesaid error as not constituting *"an error apparent on the face of record*" and on the said ground, refused to grant the petitioner liberty to even correct the same.

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[8] (2019) 13 SCC 225; 2018 SCC Online SC 1945

[9] (2002 TIOL 650 SC Cus)

[10] 1988 (37) ELT 478

[11] (2018) SCC Online Bom 997

16. The entire reasoning of the ITGRC is to be found in paragraphs 17.4.1 to 17.4.5 and the same is transcribed below for the convenience of reference.

> ***"iv. M/s Tech Force Composites Pvt. Ltd. GSTIN 30AAACT6376M1Z4 W.P. No. 78/2019:***
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> *17.4.1 It was reported from the Goa CGST authority that after uploading the details in TRAN-1, the assessee noticed that the last digit of Cenvat Balance i.e. '4' of Rs. 1,34,84,304 was missed and therefore instead of availing the amount of Rs. 1,34,84,304 they finally got the ITC of Rs. 13,48,430 in TRAN-1 which resulted in short transfer of ITC of Rs. 1,21,35,874. In the instant case the Hon'ble High Court in its order dated 27.09.2019 held that "the interest of justice will be served if the petitioner is granted liberty to make representation to the CBIC and the CBIC is directed to consider such representation for verification and bona fide of the claim made by the petitioner, no doubt in accordance with law and on its own merits, such representation will be made to the CBIC within 15 days from today. If such representation is indeed made, the CBIC is directed to consider such representation in the aforesaid terms and dispose of the same as expeditiously as possible and in any case within a period of two months from the date the same is received by the CBIC".*
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> *17.4.2 Based on the recommendation of the jurisdictional tax authority the case was presented in the 10th ITGRC as per extended scope of ITGRC and the Committee decided that case may be sent to jurisdictional Commissionerate, CBIC & GSTN for proper details whether the taxpayer had mentioned the amount Rs.1,34,84,304/- somewhere in the TRAN-1 filed and re-submit before ITGRC along with the views of the CBIC.*

17.4.3 ***Views of CBIC:*** *GST Policy Wing, CBIC vide its letter dated 14.02.2020 had stated that since due date of filing TRAN-1 under Rule 117(1) of the CGST rules has expired, the taxpayer's request can only be considered under Rule 117 (1A) of CGST Rules,2017 provided conditions thereof are satisfied. Such request has to be examined by Nodal Officer of concerned jurisdictional Commissionerate and be forwarded to GSTN/GST Council Secretariat as per the procedure provided in the CBIC Circular dated 03.04.2018 and GSTN SOP dated 12.04.2018 for consideration and recommendation by ITGRC/GST Council.*

17.4.4 ***Views of jurisdictional Commissionerate:*** *Jurisdictional tax authority vide its letter dated 24.12.2019 stated that Hon'ble High Court's order has been accepted as the same being legal and proper and no appeal is proposed against the same. Also, the verification of the credit declared in ER-1 returns was conducted by the Range Superintendent and on verification it is seen that the credit of an amount of Rs. 1,21,35,874/- is admissible to the assessee. Further, the Jurisdictional tax authority vide its letter dated 06.02.2020 had stated that figure Rs.1,34,84,304/- did not get reflected in TRAN-1 but a total amount of Rs.14,38,566 was reflected which was the sum of Rs. 13,48,430 (CENVAT) + Rs. 90,136 (PLA). The assessee had furnished the copy of ER-1 for the month of June 2017 wherein the closing balance of CENVAT account was reflected as Rs. 1,34,84,304 and the PLA balance had been shown as Rs. 90,136. The figure of Rs.1,34,84,304/- was not indicated in form TRAN-1.*

17.4.5 Committee discussed the case and observed that in the instant case TRAN-1 had been filed before due date, High Court order was available, jurisdictional tax authority had recommended the case but the error in

instant case was not apparent on the face of record as error of transposition of values in wrong column. As per extended scope of ITGRC the error should be apparent on face of record as having the scenario where the credit was entered in wrong column while filing the TRAN-1 before due date. Values posted in wrong column was a verifiable fact which could be ascertained from the already filed TRAN-1, however the instant case was not having such scenario and having the situation where taxpayer did not declare last digit of Cenvat Balance i.e. '4' of Rs. 1,34,84,304 and therefore instead of availing the amount of Rs. 1,34,84,304 they availed the ITC of Rs.13,48,430 in TRAN-1 which resulted in short availment of ITC of Rs. 1,21,35,874. The fact that Rs. 1,34,84,304 ITC was available to taxpayer could not be verified from the record of already filed TRAN-1 as it was indicated as Rs. 13,48,430 by the taxpayer, hence it was not considered as an error apparent on face of record. Therefore, the case seemed to be not squarely covered by the extended scope of ITGRC as laid down by 32nd GST Council decision and subsequently criteria specified in 8th ITGRC. Committee found that the case did not seem to be qualified within the parameters recommended for considering reopening of the portal as per extended scope of ITGRC."

17. According to us, the error in the present case, is quite evidently an error apparent on the face of the record. The reasoning that this was not a case of an error of transposition of values in the wrong column, almost proceeds on the basis that only the errors of transposition of values in the wrong column can qualify as errors apparent on the face of the record. While errors in such

transpositions, may, in a given case, amount to errors apparent on the face of the record, that does not mean that there can be no other species of errors apparent on the face of the record. Contextually, it is more than apparent that the omission to add the last digit "4" and thereby claim credit in an amount of ₹1,34,84,304/- but restrict the claim only to ₹13,48,430/- in the TRAN-1 Form was an error apparent on the face of the record and the ITGRC was not at all justified in not even permitting the petitioner to correct the same on the specious plea that though there may have been an error, such an error was not an error apparent on the face of the record.

18. Though, it is not for us, at this stage, to go into the validity of the claim made, we refer to the views of the jurisdictional Commissionerate as transcribed in paragraph 17.4.4 of the impugned decision. In this, the jurisdictional Commissionerate has referred to the verification of the credit declared in ER-1 Returns and stated that on verification it was found that the credit of an amount of ₹1,21,35,874/- is admissible to the assessee. Now, if this amount is added to the amount actually but mistakenly claimed by the petitioner in the TRAN-1 Form, the same works out to the figure of ₹1,34,84,304/-. This is what is reflected in paragraph 17.4.4 of the impugned decision.

19. No doubt, as pointed out by Ms. Kamat, the aforesaid

observations cannot be treated as final at this stage. She pointed out the observations in paragraphs 17.4.5, in which, it is stated that the values posted in the wrong column are normally verifiable facts which can be ascertained from the already filed TRAN-1 Form. However, in the instant case, this was not possible since the petitioner did not declare the last digit of CENVAT balance i.e. "4" of ₹1,34,84,304/- and, therefore, instead of availing the amount of ₹1,34,84,304/-, they availed the ITC of ₹13,48,430/- in the TRAN-1 Form which resulted in short availment of ITC of Rs. 1,21,35,874. She stressed on the paragraph which stated that the fact that ₹ 1,34,84,304/- ITC was available to the taxpayer could not be verified from the record of already filed TRAN-1 as it was indicated as ₹13,48,430 by the taxpayer and hence, this was not considered as an error apparent on the face of the record.

20. According to us, even this reasoning merely reflects that on account of the error made by the petitioner in filing the TRAN-1 Form, no verification was possible. The question really is whether this error, amounts to an error apparent on the face of the record and, therefore, an opportunity of correction of the same ought to have been granted to the petitioner. In the facts of the present case, we are quite satisfied that this was a typographical or clerical error, and further, this error was one which was clearly apparent on the face of the record and, therefore, the petitioner deserves to be granted an

opportunity to correct the same.

21. The decisions relied upon by the petitioner support the contentions of the petitioner. In contrast, there is nothing in the decisions relied upon by Ms. Kamat which, in any manner, detract from the contentions raised by and on behalf of the petitioner. In fact, it is necessary to note that it is not even the case of the respondents that they have no powers to permit corrections when they are satisfied there is an error apparent on the face of the record. The respondents only contend that the error, in this case, was not an error apparent on the record.

22. In the present case, since, there is an error apparent on the face of the record, the respondents were not justified in denying the petitioner, the opportunity of correction by simply refusing to acknowledge that this was an error apparent on the face of record though, it may have been an error simpliciter on the part of the petitioner.

23. Ms. Kamat tried to contend that this is a case where, the petitioner was negligent and, therefore, ought to be deprived of the opportunity of correction. According to us, the material on record does not indicate any negligence. Some accommodation is necessary for human error or clerical error especially when such error, on the

face of it, appears to be unintended. The petitioner had absolutely nothing to gain by not claiming the ITC of ₹1,34,84,304/- and claiming ITC of only ₹13,48,430/- instead. This is a case where, on account of human error or clerical error, there was an omission to indicate the last digit "4" whilst raising the claim of ₹1,34,84,304/-. As was noted earlier, this correct figure is reflected in the ER-1 Return filed by the petitioner in respect of the same amount. The views of the jurisdictional Commissionerate also, to a great extent, coincide with the claim now made by the petitioner. Such views may not be conclusive at this stage. But such views speak of the bonafide of the petitioner. Such views support the case of the petitioner that there was some unintended error in omitting the last digit "4" in the Form.

24. Therefore, upon cumulative consideration of all the aforesaid circumstances, we allow this petition and direct the respondents to permit the petitioner to file or revise already filed, the incorrect TRAN-1 Form either electronically or manually on or before 15th January 2021. The respondents, are, no doubt, at liberty to assess the corrected claim of the petitioner, but if the claim is found to be correct, the same shall not be denied on the ground that there was a shortfall in the TRAN-1 Form which was submitted on 27.12.2017.

25. The Rule is made absolute to the aforesaid extent.

26. There shall be no order as to costs.

27. All concerned to act based on the authenticated copy of this Order.

M. S. JAWALKAR, J. ***M.S. SONAK, J.***

msr.