



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 12190/2019

Pacific Industries Ltd., Having Its Registered Office At Survey No. 13, N.H. 48, Kempalinganahalli Village, Nelamangala Taluk, Bangalore (R), Karnataka, 562123 And Corporate Office At Village Bedla, Udaipur- 313004, Rajasthan, India Through Its Authorised Representative Mukesh Kumar Agarwal, Age - 54, R/o 223 B Block, Meera Nagar, UIT Scheme, Bhuwana, Udaipur-313001 Rajasthan.

-----Petitioner

Versus

1. Union Of India, Ministry Of Finance (Department Of Revenue) Room No. 46, North Block, New Delhi - 110001 Through Joint Secretary (Revenue).

2. State Of Rajasthan, Finance Department (Tax Division) 1st Floor, Main Building, Gate-2, Government Secretariat, Jaipur, Rajasthan 302005 Through Its Joint Secretary (Tax).

3. The Deputy Commissioner, CTO Ward, A-Circle, Udaipur - 313001, Rajasthan.

-----Respondents

For Petitioner(s) : Mr. Sanjay Jhanwar, Sr. Advocate with
Ms. Sharda Agarwal &
Mr. Pushkar Tamini.
For Respondent(s) : Mr. Rajvendra Sarswat.

**HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR BHARWANI**

Order

15/03/2022

1. The petitioner herein has approached this Court through this writ petition under Article 226 of the Constitution of India for assailing the action of the respondent GST Department whereby, the petitioner was deprived from submitting the Form GST ITC-



02A online and as a consequence, the petitioner was deprived from availing the Input Tax Credit to the tune of Rs.2,58,03,590/- through Form GSTR-3B.

2. Brief facts relevant and essential for disposal of the writ petition are noted herein below:

The petitioner is a registered dealer under the GST regime having two industrial units registered in Udaipur. The Union of India prescribed Form GST ITC-02A under the Central Goods and Service Tax Rules, 2017 (hereinafter referred to 'as the Rules of 2017') which had to be submitted/uploaded on the portal of the Goods and Service Tax Network (hereinafter referred to as 'the GSTN Portal') through which, unutilised input tax credit was permitted to be transferred to a newly registered unit of the assessee within the same State. The State of Rajasthan has also prescribed the same form by amending the Rules of 2017. Prior to 01.02.2019, a person having various business verticals within a State, was not entitled to seek separate registrations for multiple places of business. However, by effect of amendment dated 01.02.2019, a person having multiple business at different places became entitled to separate registrations for each location where his business verticals were being operated. As a single registration was permissible under the unamended provision, the tax liability and the input tax credit accrued to the said single registration. After coming into force of the amendment dated 01.02.2019, separate registrations as per location of business were allowed and accordingly, the tax liability as well as input tax credit would be calculated individually for each unit. Pursuant to this amendment, Rule 41A was introduced in the GST Rules of Center



as well as State vide notification dated 29.01.2019. This rule prescribes transfer of unutilised input tax credit lying in the Electronic Credit Ledger of a registered unit to the newly registered unit of an assessee within the same State as per Section 25(2) of the Act. In order to give effect to this mode of filing ITC Credit, Form GST ITC-02A was prescribed which was to be submitted on the GSTN Portal within a month of obtaining the new registration as per Section 25(2) of the GST Act so that the unutilised input tax credit could be transferred from the previously registered unit to the newly registered unit of the assessee. Rule 41A reads as below:

"Rule 41A: Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory.

(1) A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of rule 11 and who intends to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within a period of thirty days from obtaining such separate registrations, the details in **FORM GST ITC 02A** electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner:

Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.

Explanation.- For the purposes of this sub-rule, it is hereby clarified that the 'value of assets' means the value of the entire assets of the business whether or not input tax credit has been availed thereon.

(2) The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such acceptance, the unutilised input tax credit specified in **FORM GST ITC 02A** shall be credited to his electronic credit ledger."



3. The petitioner has raised a pertinent grievance in this writ petition that the Form GST ITC-02A was not available on the GSTN Portal for the entire period of 30 days from the registration of its separate business verticals and even till the date of filing of the instant writ petition and as a consequence, the petitioner was denied the opportunity of transferring the unutilized input tax credit to its new registration which became effective on 16.04.2019. The petitioner claims to have uploaded a manual copy and submitted the same to the Deputy Commissioner, CTO Ward, A-Circle Udaipur on 14.05.2019 but the same was not accepted. The petitioner claims to be suffering immense financial difficulty on account of not being able to use the unutilised input tax credit of GST to fulfill the tax liability of the new business registration. The petitioner also raised this issue with the GST Helpdesk and a ticket No.201905145915528 was issued to it on 14.05.2019. In response to this ticket, the petitioner was forwarded a tutorial link. However, this tutorial link was regarding filing of the Form GST ITC-02 and not Form GST ITC-02A. The petitioner submitted another letter to the Deputy Commissioner, CTO Ward, A-Circle Udaipur raising an issue regarding Form GST ITC-02A and the steps taken by the petitioner to submit the said form, but no response was received thereto whereupon, the petitioner approached this Court by way of this writ petition.

4. In reply to the writ petition, the assertions made by the petitioner in reference to the non-availability of the Form GST ITC-02A on the GST Portal is not denied. A feeble attempt has been made in para No.10 of the reply that the petitioner did not furnish the Form GST ITC-02A within the period of 30 days from the date



of newly registered Unit i.e. 16.04.2019 and that the application submitted by the petitioner to the department was dated 11.06.2019 way past the time limit of 30 days. However, in the entire reply, the respondents have not disputed the pertinent assertion of the petitioner that the Form GST ITC-02A was not available on the GSTN Portal on the dates referred to in the writ petition.

5. Shri Sanjay Jhanwar, Senior Advocate assisted by Ms. Sharda Agarwal, Advocate, vehemently and fervently urged that the admitted facts of the case make it clear that the petitioner was deprived of the opportunity to furnish the Form GST ITC-02A only for the reason that the Form was not available on the GSTN Portal. The fact regarding the petitioner having raised the issue with the GST Helpdesk within the period of 30 days, is manifested from the response mail dated 21.05.2019 sent by GST Helpdesk to the petitioner pursuant to raising of this grievance vide ticket No.201905145915528. The petitioner submitted the manual Form GST ITC-02A to the Deputy Commissioner, CTO Ward, A-Circle Udaipur within the outer limit of 30 days as is evident from the letter dated 14.05.2019 (Annexure-2).

6. Shri Saraswat, learned counsel representing the respondent GST Department, vehemently and fervently opposed the submissions advanced by petitioner's counsel. However, he too was not in a position to dispute the fact that Form GST ITC-02A was not available on the GSTN Portal within the stipulated period of 30 days from the date of registration of the petitioner's new business vertical and hence, the petitioner was genuinely and



bonafidely prevented from uploading the same. It was also not disputed that the petitioner manually submitted the form to the to the Deputy Commissioner, CTO Ward, A-Circle Udaipur within the prescribed period of 30 days.

7. As a consequence of the admitted factual position, we are of the firm opinion that the impugned action whereby, the respondents have failed to acknowledge and transfer the input tax credit to the tune of Rs.2,58,03,590/- accruing to the petitioner pursuant to the registration of its new business unit in accordance with Rule 41A of the GST Rules, is grossly illegal, arbitrary and unjust.

8. Hence, the writ petition deserves to be and is hereby allowed in the following terms:

“The respondents are directed to regularise the input tax credit in favour of the petitioner as per entitlement. The petitioner shall be allowed to avail the Input Tax Credit of Rs.2,58,03,590/- through the next GSTR-3B return.”

9. Stay application is disposed of.

(VINOD KUMAR BHARWANI),J

(SANDEEP MEHTA),J

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