

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6418 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA Sd/-

**and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

M/S DEENDAYAL PORT TRUST

Versus
THE HIGH COURT
OF GUJARAT
UNION OF INDIA

Appearance:

MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1

MR ANKIT SHAH(6371) for the Respondent(s) No. 1,2

**CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

Date : 12/02/2020

**ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. **Rule returnable forthwith.** Mr. Ankit Shah, learned advocate waives service of notice of rule for the respondents.

2. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following relief(s):-

"7(a) direct the respondent authorities to allow the Input Tax Credit for the period from 1st April, 2017 to 30th June, 2017 as appearing in Tran-1;

(b) alternatively, direct the respondent authorities to permit the petitioner to revise tax return for the period from 1st April-2017 to 30th June, 2017 such that the different Input Tax Credit left out owing to certain technical glitches can be claimed and further direct the respondent authorities to allow such Input Tax Credit to be carried forward in Tran-1 in view of the transitional provisions of the CGST Act;

(c) Pending the admission, hearing and final disposal of this petition, direct the respondent authorities not to press for reversal or recovery of ITC to the tune of Rs.99,46,810/-.

(d) Any other and further relief deemed just and proper be granted in the interest of justice;

(e) to provide for the cost of this petition."

3. The facts giving rise to this petition may be summarized as under:-

3.1 The petitioner is a body corporate notified under the Major Port Trust Act, 1963 established for developing, operating and managing a major port in Kandla.

3.2 The petitioner follows the cash system of accounting. The petitioner filed return of service tax in Form ST-3 for the period from 1st April, 2017 to 30th June, 2017 on 14.08.2017.

3.3 It is the case of the petitioner that after filing of such return, it was realized that there were certain invoices pertaining to the said period which remained unaccounted and consequently, Input Tax Credit (for short the "ITC") involved in such invoices could not be claimed in the return of service tax in Form ST-3. The petitioner, therefore, using online facility available on the Automation of Central Excise and Service Tax (for short the "ACES") filed revised Form ST-3 on 17.09.2017, wherein ITC of Rs.6,94,19,228/- was claimed.

3.4 It is the case of the petitioner that it was further realized that some more invoices remained unaccounted and ITC involved therein amounting to Rs.99,46,810/- was left out even in the revised return in Form ST-3. The petitioner, therefore, again tried to file second revise return so as to claim correct amount of ITC.

3.5 It is the case of the petitioner that online ACES did not permit the petitioner to file revised return for the second time. The petitioner, therefore, could not claim the ITC to the tune of Rs.99,46,810/-. The petitioner, vide letter dated 09.11.2017, requested the Assistant Commissioner of Goods and Service Tax, Gandhidham to consider

additional claim of ITC which could not be claimed since the ACES portal did not permit the second time revision of the return in Form ST-3.

3.6 On 1st July, 2017, the Central Goods and Service Tax Act, 2017 (for short the "CGST Act-2017") came into effect replacing the Service Tax Act. As per transitional arrangement for ITC, provision of Section 140 of the CGST Act-2017 is made so as to permit the registered person to take to the electronic credit ledger, the amount of ITC of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day. Accordingly, the petitioner filed Form No. Tran-1 online, wherein the amount of ITC was entered into including the amount of Rs.99,46,810/-. The petitioner claimed correct amount of ITC being Rs.7,93,66,038/- (i.e. Rs.6,94,19,228/- + as per revised return Form No. ST-3 + Rs.99,46,810/- being the ITC which was not permitted to be claimed by filing second revised return on the AECs portal.

3.7 The respondent no.2, vide notice dated 07.12.2018, informed the petitioner that on verification, the Form No. Tran-1 was showing Rs.7,93,66,038/- whereas actual closing balance of ITC in last service tax Form No. ST-3 filed by the petitioner was Rs.6,94,19,228/-. It was, therefore, brought to the notice of the petitioner that the petitioner had wrongly claimed ITC of Rs.99,46,810/-. The petitioner was, therefore, asked to reverse or

pay the differential amount of Rs.99,46,810/- and submit proof of the same.

3.8 By letter dated 27.12.2018, the petitioner brought the correct facts to the notice of the respondent no.2 and submitted that availing ITC is a basic right which cannot lapse on some technical counts.

3.9 The respondent no.2, vide notice dated 31.12.2018, informed the petitioner that as per Rule 7B of the Service Tax Rules, 1994 (for short "Rules-1994"), an assessee may file a revised return in Form ST-3 within a period of 90 days from the date of submission of original return in Form ST-3. It was informed to the petitioner that when the original return is revised, no other option for second revision of the return is permitted as per Rules-1994. The petitioner has filed this petition for appropriate direction to the respondents to permit the petitioner to avail ITC of Rs.99,46,810/- under CGST Act-2017.

4. Heard Mr.Tushar Hemani, learned Senior Advocate assisted by Ms.Vaibhavi Parikh, learned advocate for petitioner and Mr.Ankit Shah, learned advocate for the respondents.

5. Learned Senior Advocate Mr.Tushar Hemani submitted that the respondents could not have denied the ITC to the petitioner on the ground that once the original return is in Form of ST-3 is revised, then

there is no option under Rules-1994 to revise it again. It was further submitted that it is the right of the petitioner to claim ITC under the provisions of the Service Tax Act as well as the CGST Act-2017. The petitioner cannot be deprived of the legitimate claim of ITC on the ground of interpretation made by the respondents that no other option is possible once an option is exercised under Rule 7B of the Rules-1994. It was contended that if there is no mechanism in "Tran-1" whereby in case any variation in the actual amount of ITC and the amount of ITC appearing in ST-3, then actual amount of ITC is required to be granted manually after proper verification.

6. Learned Senior Advocate Mr.Tushar Hemani relied upon the Order No.01/2020-GST dated 7th February, 2020, issued by the Government of India, Ministry of Finance (Department of Revenue) (Central Board of Indirect Taxes and Customs) to submit that now the Portal for Form GST TRAN-1 is again opened for the period till 31st March, 2020. It was, therefore, submitted that necessary directions are required to be given to the respondents to consider the case of the petitioner for ITC under CGST Act-2017 considering Form ST-3 filed by the petitioner together with differential sum of Rs.99,46,810/- and to verify the claim of the petitioner then the petitioner would be entitled to upload the revised Form Tran-1 in order to get the credit of ITC to which the petitioner is entitled to.

7. On the other hand, Mr.Ankit Shah, learned

advocate appearing for the respondents relying upon the averments made in the affidavit-in-reply filed on behalf of the respondents submitted that once the original return is revised, there is no option in the Rules-1994 to permit the assessee to file second revised return, and therefore, the petitioner is not entitled to or not eligible to carry forward the amount of Rs.99,46,810/-. The averments made in the affidavit-in-reply is quoted herein below:-

"23. As per the provision under Rule 7B of the Service Tax Rules, 1994, the petitioner had revised the ST-3 returns on 17.09.2017 and accordingly the balance Cenvat Credit in the said ST-3 return was Rs.6,94,19,228/-. As per Section 140 of the CGST Act, 2017, assessee was entitled to carry forward at as the closing balance in ST-3. As per revised ST-3 return filed by the petitioner, closing balance of CENVAT credit was Rs.6,94,19,228/- and hence the petitioner was required to file "Tran-1" claiming only that amount. Petitioner's claim, that after filing of revised ST-3 returns they again realized that some more invoices remained unaccounted and the amount of ITC involved under such invoices was Rs.99,46,810/-, but they could not revise the ST-3 return again as the online portal did not permit and hence, the benefit cannot be denied, is not permitted. In view of the above and in view of the case laws submitted supra the petitioner is not eligible to carry forward the amount of Rs.99,46,810/- and the same is required to be paid/reversed."

8. It was further submitted that provision of Rule 7B of the Rules-1994 provides option to the assessee to correct a mistake or omission within a period of 90 days from the date of submission of the return under rule 7. Therefore, the assessee cannot keep on

filing the revised return once an option is exercised and the ACES portal also would not allow the petitioner to file repeatative revised return during the period of 90 days.

9. Having heard learned advocates for the respective parties and having gone through material available on record, in order to consider the issue raised in this petition with regard to the terms of filing of revised service tax return for the second time, it would be germane to refer Rule 7B of the Rules-1994 which reads as under:-

"7B (1) An assessee may submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of (ninety) days from the date of submission of the return under rule 7;

(provided that the revised return for the period from the 1st day of April-2017, to the 30th day of June, 2017, shall be submitted within a period of forty five days from the date of submission of the return under rule 7.

(2) An assessee who has filed the annual return referred to in sub-rule (3A) of rule 7 by the due date may submit a revised return within a period of one month from the date of submission of the said annual return)

Explanation: Where an assessee submits a revised return, the "relevant date" for the purpose of recovery of service tax, if any, under Section 73 of the Act shall be the date of submission of such revised return."

10. On perusal of the aforesaid Rule 7B of the Rules-1994, it permits the assessee to file revised return in form ST-3, in triplicate, to correct a

mistake or omission, within a period of ninety days from the date of submission of return under Rule 7. Rule 7 prescribes for return to be filed under Form ST-3. As per rule 7B, it appears that the assessee can revise the return filed under Rule 7 within a period of 90 days from the date of submission of the original return under Rule 7 of the Rules-1994. Rule 7B only permits the assessee to revise the mistake or omission in the return filed under Rule 7 within a period of 90 days. If the assessee finds any mistake in the form ST-3 file under Rule 7 of the Rules-1994, he can revise the same in multiple documents within prescribed period. The intention of the framing of the Rule is to revise return Form ST-3 filed under Rule 7 of the Rules-1994.

11. In that view of the matter, the stand taken by the respondents that once option is exercised to revise the original return then the assessee cannot file revised return again within prescribed time period under Rule 7B of the Rules-1994 is not tenable. ACES portal not allowing the petitioner to revise the Form ST-3 for the second time within prescribed period resulting into technical glitches is contrary with the provisions of Rule 7B of Rules-1994.

12. On one hand, when the ACES Portal did not permit the petitioner to file revised return for the second time due to which the claim of ITC to the tune of Rs.99,46,810/- was not reflected in the last return in Form ST-3 filed by the petitioner and on the other

hand, when the petitioner entered the correct amount of ITC including the amount of Rs.99,46,810/- in Form Tran-1 while claiming the ITC under CGST-2017, there is no mechanism whereby such claim can be verified by the system and as such there is difference in amount of ITC in the form of ST-3, in the system and the Form Tran-1 which is filed by the petitioner. Therefore, in such circumstances, differential amount of ITC of Rs.99,46,810/- cannot be denied to the petitioner on the ground of technical glitches not permitting the petitioner to file second revised return within the prescribed time period, as there is no prohibition as per Rule 7B of Rules-1994 to file revised return more than one time to revise return filed under Rule 7 of the Rules 1994 within stipulated period under Rule 7B of the Rules-1994.

13. In the opinion of the the Court, the respondents have failed to consider the aspect of technical glitches to reject the claim of the petitioner on the ground that the petitioner has no option to revise the return in Form ST-3 once the original return is revised by the petitioner.

14. For the foregoing reasons, the respondents are hereby directed to consider the claim of the petitioner for the amount of ITC of Rs.99,46,810/- manually under Rule 7B of the Rules-1994, so as to enable the petitioner to take advantage of the order dated 07.02.2020 to revise the Form Tran-1 to be filed online on or before 31.03.2020. Such exercise

shall be completed by the respondents on verification of the claim of the petitioner for the differential amount of the ITC of Rs.99,46,810/- within a period of two weeks from the date of receipt of copy of this order.

15. The petition accordingly, stands disposed of. Rule is made absolute to the aforesaid extent.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

GIRISH

