

GST: Where various assesseees were unable to upload their returns both GSTR9 and GSTR9C as GST portal of Government of India had not been effectively functioning and clearly there appeared to be a physical limit, to which extent returns/forms could be uploaded on any one day (apart from admitted intermittent technical shutdowns), assesseees were to keep uploading their returns at earliest possible and no late fee shall be charged till 12-2-2020 for uploading

• Respondent authorities were to be directed to enable compliance of such uploading by making necessary/consequential corrections on its official portal.

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[2020] 114 taxmann.com 121 (Rajasthan)

HIGH COURT OF RAJASTHAN

Tax Bar Association

v.

Union of India

INDRAJIT MAHANTY, CJ. AND DR. PUSHPENDRA SINGH BHATI, J.

D.B. CIVIL WRIT PETITION NO. 1805 OF 2020

FEBRUARY 5, 2020

Sanjay Jhanwar, Rahul Lakhwani and Prateek Gattani for the Petitioner. Vipul Singhvi, Anil Bhansali and Dixit Panwar for the Respondent.

ORDER

1. The name of Shri Sanjay Jhanwar as learned counsel for the petitioner be read in the earlier order passed by this Court today in the morning.
2. Learned counsel for the petitioner was directed to implead the service provider, who operates the GSTN portal, as party respondent. The name and address of the service provider shall be provided by the learned counsel for the Union of India.
3. The present petition has been filed by the Tax Bar Association raising the issue about non-functionality of the respondent's portal i.e. www.gst.gov.in, as a consequence of which, various assesseees are unable to upload their returns both GSTR9 and GSTR9C. In view of the fact that the portal was having problems, the respondents issued a notification vide Annex.6 dated 3rd February, 2020 at page 52, requiring the assesseees to furnish their returns under Section 44 of the GST Act read with Rule 80 of the Rules for the Financial Year 2017-18 by 5th February, 2020 (Rajasthan).
4. Learned counsel for the petitioner Association drew our attention to Annex.4 seeks to show that when an assessee attempted to upload the returns/forms in GSTR9 and GSTR9C on 31.01.2020 at 5:09 PM, the website of the Govt. noted as follows:

"Dear Tax Payer

1,50,000 tax payers are already submitting their returns at this moment...

Please wait for your turn in a few minutes...

Thank you for your patience."

5. Similarly attempts were made thereafter on the self-same date at 6:58 PM as well as 7:50 PM with the same result. It may be borne in mind that the last date fixed for filing of returns originally fixed to 31st of January, 2020.

6. Although a "tweet" was issued by the Central Board of Indirect Taxes & Customs (CBIC) on 31.01.2020 at 10:30 PM indicating that the last date has been extended in a staggered manner ending on 3rd, 5th and 7th February, 2020 yet in accordance with the notification that was issued thereunder, came to be issued on 03.02.2020. Consequently, all remaining tax payers were clubbed into two dates i.e. 5th and 7th February, 2020. It is essential to note that last date for filing returns in the State of Rajasthan was 5th February, 2020.

7. Learned counsel for the petitioner also drew our attention to the subsequent attempts made by the advocates/tax consultants to upload the assessee's returns on 3rd February as well as 4th February, 2020. In spite of several such attempts, they have not been able to upload the same. He has further drawn our attention that although time has been extended upto 5th February, 2020 yet in the evening of 4th February, 2020 at 8:03 PM attempt was made to upload the return, but such return required mandatory deposit of "late fee". In other words, the software portal had not been updated at least till that date, even though the notification dated 3rd February, 2020 was already issued by the Govt.

8. Learned counsel for the petitioner fairly submits that on verification of the portal today, it appears that software glitch requiring the assessee to deposit "late fee" has been corrected and attempts are being made by various assesseees within the State to upload their returns/forms in course of the day.

9. We have, by the order passed this morning, called upon learned counsel for the Union of India/CBIC to take instructions on the issue of the serious uploading problems being faced by the assesseees. In the said order, we had directed Mr. Vipul Singhvi, learned counsel for the Union of India, to seek instructions from the appropriate authorities about the technical difficulties being faced by the assesseees in uploading their returns/forms and further, to consider the request of the assesseees for extending the time for uploading the returns. We called upon the learned counsel for Union of India to intimate this Court at 2:00 PM the response of the concerned officers.

10. At 2:00 PM when the matter was taken by this Court, Mr. Singhvi drew our attention to the fact that the last date for filing of returns for the F.Y. 2017-18 was originally fixed as 31st January, 2020 and the assesseees had opportunity to file the same on or before the said date. Apart from this, he submits that the suggestion made by the petitioner to allow the assesseees to upload their returns on an e-mail address of any specific officer was not acceptable to the Union of India, on account of the fact that every return is required to be uploaded in the main GST portal for taking input credit and therefore the Union of India is required to resort to auto-ported data. Thus, the request of the petitioner to submit their returns in any other mode other than the GST portal cannot be accepted.

11. Apart from the above, he drew our attention to certain documents indicating that out of 64,17,471 assesseees who were required to file return in GSTR9, a total of 39,45,439 have filed the returns at 1:30 PM of 05.02.2020. Similarly, out of 12,42,238 assesseees, who were required to submit their returns in GSTR9C returns/forms, a total of 7,76,999 have uploaded their returns till 1:30 PM today. He further submitted a chart to indicate the number of returns uploaded till date.

12. On an analysis of the documents submitted by learned counsel for the Union of India, it appears therefrom that the highest number of returns were uploaded on 31st of January, 2020 i.e. 2,19,417 in GSTR9 and 1,33,027 in GSTR9C. We further take note of the fact that on 1st, 2nd and 3rd February, 2020, a total 10,914, 36,643 and 1,06,568 GSTR-9 returns were uploaded and for returns of GSTR9C

forms, a total of 9,213, 24,096 and 67,773 returns respectively were uploaded on the aforesaid dates.

13. Learned counsel for the Union of India submits that this would indicate that the site in question was in operation during the period prior to the last date of filing returns i.e. 31.01.2020 as well as in operation till today i.e. 5.01.2020.

14. Learned counsel for the petitioner placed reliance on the self-same documents and statistics contained therein to show that on no single day has more than two lacs forms/returns ever been uploaded on the GST portal. Amongst the figures provided by the Union of India, it appears that at 1:30 PM today, 24,72,032 for GSTR9 and 4,65,219 for GSTR9C are yet remaining pending uploading. Therefore, he submits that even if an average of 2 lacs forms/returns per day are accepted by the system, the said fact would indicate that, even if this system operated at full strength, it would require a minimum 15 days time for accepting the uploading of the returns for remaining assesseees.

15. Learned counsel for the Union of India, on the other hand, submits that the Union of India after considering the aforesaid problems which the assesseees are facing, had extended the period upto 05.02.2020 (in so far as the Rajasthan is concerned) and no further extension ought to be permitted since the body which is deciding the issue is a constitutional body. Mr. Singhvi further drew our attention to the figures relevant to the State of Rajasthan which are noted hereunder:-

<i>GSTR9</i>	<i>Eligible</i>	-	5,66,381
	<i>Filed -</i>	-	2,71,224
<i>GSTR9C</i>	<i>Eligible</i>	-	64,187
	<i>Filed -</i>	-	48,153

16. On consideration of the facts situation, since the respondents are yet to obtain any instruction to effectively resolve the matter, we deem it appropriate to grant the Union of India time till 12.02.2020 to file a detailed reply/affidavit.

17. However, keeping the aforesaid situation being faced by assessee in view, we are of the considered opinion that an interim order needs to be passed in light of the fact that the GST portal of the Govt. of India has not been effectively functioning and clearly there appears to be a physical limit, to which extent returns/forms can be uploaded on any one day (apart from admitted intermittent technical shutdowns).

18. We are prima facie satisfied that even if an assessee is ready and willing to comply with the statutory duty, so far as filing of returns are concerned, the website appears to be having technical bottlenecks, which appears to limit the opportunity of an assessee from uploading the forms. We also keep in view the fact that the option suggested by the petitioner for submitting their returns on e-mail of a responsible officer has also been turned down by the Union of India.

19. Consequently, we hereby direct that the petitioner Association and the assessee, for whom they represent, may keep uploading their returns at the earliest possible and we direct that no late fee shall be charged till 12th of February, 2020 for uploading. The respondents are directed to enable compliance of such uploading by making necessary/consequential corrections on its official portal.

20. The aforesaid directions are being passed without prejudice to the rights and contentions of the either parties. We further direct that the Union of India may file an affidavit by the portal operators regarding the status of its working and the magnitude or the ability of such portal or system for accepting a requisite number of returns/forms. We further direct that if necessary, the Union of India may also direct the service provider to enhance its capacity to accept returns/forms. Since it is well-settled that where the last date of submission has been prescribed by law, it would be incumbent on the part of the revenue to provide for adequate facility for accepting such declarations or returns or forms within the period stipulated.

21. List this matter on 12.02.2020.

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