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Nr. Gulab Tower, Sola Road, Ahmedabad-380061, Gujarat. **...Petitioners**

Versus

1. Union of India,
   Through The Secretary
   Ministry of Finance
   (Department of Revenue) No.137,
   North Block, New Delhi-110001.

2. Union of India,
   Notice to be served upon
   The Ld. Secretary
   Ministry of Law & Justice
   4th Floor, A Wing, Rajendra Prasad Road,
   Shastri Bhavan, New Delhi – 110 001.

3. The Goods and Service Tax Council (GST Council)
   Notice to be served upon
   The Ld. Secretary
   Office of the GST Council Secretariat,
   5th Floor, Tower II, Jeevan Bharti Building,
   Janpath Road, Connaught Place, New Delhi-110 001.

...Respondents

To,

The Hon'ble Chief Justice and

The Other Hon'ble Judges of the

High Court of Gujarat at Ahmedabad.

The humble Petition of the Petitioners above named;

MOST RESPECTFULLY SHEWETH THAT:-

1. The Petitioners in the present writ petition under Article 226 of the Constitution of India, 1950 are challenging the constitutional validity and vires of the Rule 117 of

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the Central Goods and Services Tax Rules, 2017 and Form GST Tran-1 issued thereunder on the ground that the said provisions are *ultra vires* of the enabling provisions of Section 140(5) of the Central Goods and Services Tax Act, 2017 and are in excess of rule making powers vested in the Central Government under Section 164 of the said Act and also offends Article 14, Article 19(1)(g), Article 265 and Article 300A of the Constitution of India, 1950.;

2. The brief facts leading to the filing of the present Petition are stated as under:-

2.1 The Petitioner no. 1 is a company incorporated under the Companies Act, 1956 having its registered office at Jay House, Nr Saffronbuilding, Panchvati, Ellisbridge, Ahmedabad 38006, Gujarat and Principal Place of Business at 661 B, Jay House, Ambawadi Road, Panchvati, Ahmedabad, Gujarat, 380006., bearing CIN No. U24119GJ2000PLC037683. Copy of the incorporation certificate of the Petitioner No.1 is annexed hereto and marked as **Annexure-A**.

2.2 The Petitioner no. 2 is a citizen of India and shareholder and director of the Petitioner no. 1

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company. In the instant case, by reasons of the wrongful and illegal actions of the Respondents, the rights of the Petitioner No. 2 to carry on business and/or hold property through the agency and/or instrumentality of the Petitioner No. 1 Company, has been seriously prejudiced and adversely affected. Copy of the Master Data of the Petitioner No.1 is annexed hereto and marked as **Annexure-B.**

2.3 The Petitioners state that the cause of action in the instant case has arisen within the territorial jurisdiction of this Hon'ble Court.

2.4 The Petitioners state that Petitioner No. 1 Company is registered under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Central GST Act) and Gujarat Goods and Services Tax Act, 2017, vide registration bearing no. 24AAACJ7628J1ZG. Copy of the registration certificate is annexed hereto and marked as **Annexure-C**.

2.5 The Petitioners state that the Central GST Act is enacted by Parliament in exercise of powers conferred under Article 246A, 269A and 279A of the Constitution of India, 1950 for levy and collection of tax on *intra*

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State supply of goods or service or both by the Central Government and repeal of certain Central Act including the Central Excise Act, 1944 as set out under Section 174(1) of the said Act.

2.6 The Petitioners state that the Section 140 of the Central GST Act is a transitional provision to allow credit of CENVAT as available/admissible on the day immediately proceeding the appointed day i.e. 01-07-2017.

2.7 The Petitioners state that under Section 140(5) of the Central GST Act, a registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day. Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days. Provided further that said registered person shall furnish a statement, in such manner as may be

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prescribed, in respect of credit that has been taken under this sub-section.

2.8 The relevant provision of the Section 140 of the Central GST Act is set out below:

<u>Section 140 of the Central GST Act, 2017</u>

Section 140 (5) *A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day :*

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

2.9 The Petitioners state that the Central Government in exercise of power conferred under Section 164 of the

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said Central GST Act framed the Central Goods & Service Tax Rules, 2017 (hereinafter "the Central Rules" in short) which came into force w.e.f. 01-07-2017.

2.10 The Petitioners further state that the existing law is defined under Section 2(48) of Central GST Act which reads as follows:-

> ***Section 2(48)***
>
> *"existing law" means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by such law, notification, order, rule or regulation;*

2.11 The Petitioners state that Section 140(5) of the Central GST Act is a complete Code in itself with respect to determining eligibility to claim credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law. Section 140(5) permits credit of eligible duties directly in electronic credit ledger subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of

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thirty days from the appointed day and furnishing of a statement. It does not provide for eligibility subject to any further conditions or procedures by way of Rules.

2.12 The Petitioners state that the Section 164 of the Central GST Act deals with Rule making powers and empowers Central Government to frame rules for carrying the purpose of the Act. The provision of Section 164 is set out below:-

<u>Section 164 of the Central GST Act, 2017</u>

"164. Power of Government to make rules

(1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force. (4) Any rules made under sub-section (1) or sub-section (2) may provide that a

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contravention thereof shall be liable to a penalty not exceeding ten thousand rupees."

2.13 The Petitioners state that the Central Government in exercise of said rule making power conferred under Section 164 read with Section 140 of the Central GST Act, framed Rule 117 of the Central Goods & Service Tax Rules, 2017 (in short "the Central Rules" hereinafter) to allow carry forward of CENVAT Credit available with the assessee on the day immediately preceding the appointed day (i.e. 1st Day of July' 2017). The provisions of Rule 117 of the Central Rules is set out below:-

Rule 117(1) of the Central Goods & Service Tax Rules, 2017

"Rule 117. *Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day.*

(1) *Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in FORM GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit to which he is entitled under the provisions of the said section: Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further*

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period not exceeding ninety days. Provided further that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004.

(2) *Every declaration under sub-rule (1) shall -*

(a) in the case of a claim under sub-section (2) of section 140, specify separately the following particulars in respect of every item of capital goods as on the appointed day -

(i) the amount of tax or duty availed or utilized by way of input tax credit under each of the existing laws till the appointed day; and

(ii) the amount of tax or duty yet to be availed or utilized by way of input tax credit under each of the existing laws till the appointed day;

(b) in the case of a claim under sub-section (3) or clause (b) of sub-section (4) or sub-section (6) or sub- section (8) of section 140, specify separately the details of stock held on the appointed day;

(c) in the case of a claim under sub-section (5) of section 140, furnish the following details, namely :—

(i) the name of the supplier, serial number and date of issue of the invoice by the

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supplier or any document on the basis of which credit of input tax was admissible under the existing law;

(ii) the description and value of the goods or services;

(iii) the quantity in case of goods and the unit or unit quantity code thereof;

(iv) the amount of eligible taxes and duties or, as the case may be, the value added tax [or entry tax] charged by the supplier in respect of the goods or services; and

(v) the date on which the receipt of goods or services is entered in the books of account of the recipient.

***(3)** The amount of credit specified in the application in FORM GST TRAN-1 shall be credited to the electronic credit ledger of the applicant maintained in GST PMT-2 on the common portal.*

2.14 The Petitioners further state that the Central Government in purported exercise of powers conferred under Section 140(5) read with Section 164 of the Central GST Act and also read with Rule 117 of the Central Rules further formulated Form GST TRAN 1 which was required to be filed/uploaded/revised in the GSTN portal within 27th day of December'2017 as a condition precedent for being eligible to carry forward CENVAT Credit available with the assessee under the

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existing law on the day immediately proceeding the appointed day.

2.15 The Petitioners state that in terms of Section 140 of the Central GST Act they filed and claimed a credit of Rs. 12,76,12,259 by filing Tran 1. However, they inadvertently omitted to claim credit with respect to following eligible duties in terms of Section 140(5) of the Central GST Act:

Import Duty paid on Goods in Transit inadvertently omitted

Bill of Entry No	B/E Date	Duty Amount (Rs.)	Date on which entered in Books
2153861	19/06/2017	3,63,745	04/07/2017
2193723	22/06/2017	8,98,773	05/07/2017
2249520	27/06/2017	12,86,059	05/07/2017
	Total	25,48,577	

Copy of the format of GST Tran 1 and Copies of the documents pertaining to import duty is enclosed hereto and marked as **Annexure D** and **Annexure-E Colly** respectively.

2.1 The Petitioners fully meets all the conditions set out under Section 140(5) of the Central GST Act. They recorded the bill of entry with respect to aforesaid

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goods in transit in their books of account within a period of thirty days from the appointed day. However, the error in not claiming the credit with respect to aforesaid goods in transit could not be traced in limited time period of 180 days because the petitioner is registered in seven locations and they were required to file multiple monthly returns for each location in addition to declaration for transitional credit. The petitioner was facing also technical glitches in filing their monthly returns as well as transitional declaration. The error was noticed only during audit process after end of the financial year. A screen shot of a few problems being faced by the taxpayers which were communicated to the official GST twitter handle of the Government of India is enclosed hereto and marked as **Annexure F**.

2.2 The Petitioners having no option available with them to revise their claim of input credit under Rule 117 of the Central Rules, forthwith approached the jurisdictional GST authorities i.e. Assistant Commissioner, Commissionerate: Ahmedabad, Ghatak:9 with a physical copy of the revised GST Tran 1 dully filled in all respect claiming CENVAT credit amounting to Rs.

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25,48,577/- in respect of goods in transit which they erroneously left out in the GST Tran-1. However, the said authorities declined to accept the same on the ground that under the GST laws, they do not have any jurisdiction to accept any physical copies of GST Tran 1.

2.3 The petitioners further submit that in terms of the Section 174 of the Central GST Act, the repeal of the Central Excise Act, 1944 shall not affect any right, privilege, obligation, or liability acquired, accrued or incurred under the repealed Act.

3. In the aforesaid background, the Petitioners being aggrieved beg to move this Petition under Article 226 of the Constitution of India before this Hon'ble Court on the following grounds which are urged in the alternative and without prejudice to each other.

G R O U N D S

A. For that, the Petitioners state that the Rule 117 of the Central Goods and Services Tax Rules, 2017 and Form GST Tran-1 framed thereunder is *Ultra Vires* of Section 140(5) and in excess of rule making power under Section 164 of the Central Goods and Services Tax Act, 2017.

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B. For that, the Petitioners most humbly submit that the provision of Rule 117 of the Central Rules is *ultra vires* of the Central GST Act to the extent that it provides for filing of Form GST Tran-1 within 90 days which could be extended by a further period of 90 days as a condition precedent for carry forward of credit of eligible duties even though there is no such requirement of time limit under Section 140 of the Central GST Act. Section 140(5) of the Central GST Act provides for both substantive as well as procedural conditions to be eligible to take credit of eligible duties in their electronic credit ledger and does not restrict such claim in terms of time limit. It also does not provide for a form to be prescribed for making such a statement.

C. For that, the petitioners further submit that Section 140(5) of the Central GST Act restricts the time limit of recording the invoice or any other duty paying document relating to goods or services in transit in books of account within thirty days from the appointed day. Therefore, if the legislature had intended to restrict the time limit for filing of statement or declaration to furnish such statement it would have done so within the Act itself and would not have relegated it to the Rules. Further, Section 140(5) also does not provide for enabling power to prescribe time limit.

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D. For that, the petitioners further submit that legislature has either prescribed the time limit wherever required or has provided for enabling power to prescribe time limit within the Central GST Act itself. For e.g. sub sections (1), (2) and (3) of Section 141 of the Central GST Act, prescribes a time period of six months for returning back of any inputs, semi-finished goods or finished goods removed for job work in the pre-GST regime in order to be eligible for non-payment of tax under the GST era. Further, both the job worker and manufacturer are required to make a declaration in such form and manner and within such time as be prescribed. It is to be noted here that enabling power to prescribe time limit for filing declaration is mentioned in the Section 140(1) itself.

E. The petitioners further submit that Section 16 of the Central GST Act, which prescribes provisions relating to eligibility and conditions for taking input tax credit, allows the entitlement to take input tax credit in respect of purchase of goods or services within September following the end of financial year to such purchase or furnishing of the relevant annual return, whichever is earlier. Therefore, it is arbitrary and unreasonable to discriminate in terms of the time limit to allow availment of input tax credit with respect to purchase of goods and services made in pre GST regime and

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post GST regime. For e.g. The time of claiming input tax credit purchased in June'2017 but received in July'2017 is only six months whereas input tax credit on purchase of goods and services made July'2017 is 15 months. This discrimination does not have any rationale and therefore it is violative of Article 14 of the Constitution.

F. For that, the Petitioners further submit that Section 39(9) allows rectification of any omission or incorrect particulars in any return filed under the Central GST Act within September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier. A statement to be filed under Section 140(5) of the Central GST Act to claim credit of eligible duties of goods and services in transit is akin to a return to be filed under other provisions of the Central GST Act. Therefore, it is arbitrary and unreasonable to not allow rectification of any omission or incorrect particulars in a statement to be filed under Section 140(5) of the Central GST Act even though the same is allowed in respect to other returns to be filed. There is no reasonable rationale in discriminating between a transitional return and other returns to be filed under the Act and therefore rule 117 to that extent violates the mandate of Articles 14 and 19(1)(g) of the Constitution of India.

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G. For that, the Petitioners further submit that now under the GST regime the petitioner will have to pay GST on the supply of these goods to the customers/dealers. Thus, there will be a burden of double taxation on the same subject matter. Since the Additional duty leviable under Customs Tariff Act, 1975 has been subsumed under GST, there ought to have been free flow of availability of credit on the tax paid goods which have suffered eligible duties. Therefore, not permitting rectification of any incorrect particulars in furnishing of statement under Section 140(5) of the Central GST Act violates the mandate of Articles 14, 19(1)(g) and 265 of the Constitution of India.

H. For that, the Petitioners further submit that it is an established principle of law that an interpretation which unduly restricts the scope of a beneficial provision should be avoided so that it may not take away with one hand what the policy gives with the other. It is the policy of the government to remove cascading effect of tax by allowing input tax credit. The Objects and Reasons of the Constitution 122nd Amendment Bill, 2014, clearly set out that it is intended to remove the cascading effect of taxes and to bring out a nation wide taxation system. Therefore,

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there is a clear intention to have input tax credit as a nationwide objective at the Constitutional level.

I. For that, the Petitioners further submit that the question whether an enactment is reasonable has to be considered in the context of the relevant statute and the purpose for which it has been enacted. The GST is a new law with the purpose to avoid the cascading effect. Immediately after introduction of GST businesses were required to map the accounting software and IT systems in line with the new tax provisions, to create GST invoices, and extract required reports. There were multiple technical glitches and hiccups also in online filing of multiple returns and declarations. Therefore, some errors in filing of returns and declarations were inevitable. Therefore, Rule 117 to the extent it allows time limit only upto 27th Decemeber' 2017 to file GST Tran 1 with no opportunity to rectify errors and omissions is unreasonable and arbitrary.

J. For that, the Petitioners further submit that it is an established principle of law that an essential legislative function cannot be formulated or prescribed by the subordinate legislation. It has to be exercised by the legislature. Limitation period to file or facility to revise a statement to claim transitional credit is an essential legislative function which could not have been prescribed by

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the Rules in this regard. It should have been incorporated in the Central GST Act itself.

K. For that, the Petitioners further submit that Rule 117 is only procedural in nature. The Petitioners having fulfilled all the conditions as mentioned in Section 140(5) of the Central GST Act has acquired a substantive right to take, credit of eligible duties in respect of goods and services in transit in his electronic credit ledger. It is an established principle of law that a substantive right can't be denied for a procedural lapse.

L. For that it is submitted that distinction should be made between a procedural condition of a technical nature and a substantive condition. A distinction between the provisions of statute which are of substantive character and were built-in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in their nature on the other must be kept clearly distinguished. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve. A distinction between the provisions of statute which are of substantive character and were built-in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in their nature on the other must be kept clearly

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distinguished. While non-observance of the former is condonable but that of the latter is not condonable.

M. For that, it is humbly submitted that it is fairly well settled that power to make rule under an Act is derived from the enabling provisions found in such Act and the delegate on whom such power is conferred has to act within the limits of the authority conferred by the Act and it cannot extend or enlarge or override the scope of the parent Act as is attempted in the instant case.

N. For that, it is humbly submitted that a delegate cannot override the Act either by exceeding the authority or by making provision inconsistent with the enabling provision of the parent Act. Any rule made in exercise of such delegated power if goes beyond the contours of the parent Act, such exercise of power becomes in excess of the power delegated under the Act and thus ultra virus of the Act.

O. For that, it is humbly submitted that in the instant case a perusal of Section 140(5) read with Section 164 of the CGST Act elsewhere it would be abundantly clear that the Central Government was never vested with powers to frame the Rule 117 of the Central Rule for carrying out the purpose of Section 140(5) of the Act.

P. For that, the Petitioners most humbly submit that the Constitution of India is the fundamental law followed by law

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of the Parliament/State Legislature followed by the delegated Legislation which may be in the form of rules regulation etc. followed by executive orders. It is fairly well settled that in case of conflict between a law in the higher layer and law in the lower layer, the law in the lower layer shall be read in consonance with the law in the higher layer. In the instant case Rule 117 of the Central Rules framed by the Central Government must be read in harmony with Section 140(5) of the Central GST Act and not *dehors* the same.

Q. For that, the Petitioners submit that Section 164 of the Central GST Act confers general rule making power on the Government to make rules for carrying out the provisions of Central GST Act. It is humbly submitted that a delegated power to legislate by making rules "for carrying out the purposes of the Act" is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence obligations or disabilities not contemplated by the provisions of the Act itself.

R. For that, it is humbly submitted that it is an accepted principle that delegated authority must be exercised strictly within the limits of the authority. The mere fact that a rule-making power is phrased in terms that indicates a general delegation of power, cannot lead to the inference that such

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power may be exercised to make rules that exceed the bounds of the statute.

S. For that, it is humbly submitted that a perusal of Section 140(5) of the Act makes it clear that cases falling under the said sub-Section Rule 117 does not and cannot carry out the purpose of the Act but on the contrary are *dehorse* the Act and hence, are *ultra vires* to that extent. It is humbly submitted that a delegate cannot override the Act either by exceeding the authority or by making provision inconsistent with the Act and any rule made in exercise of such delegated power if goes beyond the contours of the Act, such exercise of power becomes in excess of the powers delegated under the Act and thus *ultra vires* of the Act.

T. For that, the Petitioners most humbly submit that delegated legislations should be framed in consonance with the legislative policy of the Act. When any criterion is fixed by the statute or by a policy, an attempt should be made by the delegate to follow such policy formulation and legislative intent and to work in conformity therewith. While framing the rules for the purposes of the Act, the delegate must respect the legislative policy of the Act and should not frame rules which either abridges the legislative policy or is against such legislative policy. In the instant case the provisions of

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Rule 117 of the CGST Rule is patently against the legislative policy and intent of the Legislature.

U. For that, the Petitioners most humbly submit that in the instant case if the provisions of Rule 117of the CGST Rules is implemented in its present form it will result in an anomalous and incongruous situation creating undue hardship without any rhyme or reason.

V. For that, the Petitioners most humbly submit that the said provision is not in conformity with the due process of law.

W. For that, the Petitioners most humbly submit that the provisions of Rule 117 of the Central Rules is *ultra vires* of Section 140(5) read with Section 164 of the Central GST Act and is also violative of Articles 14, Article 19(1)(g), and Article 300A of the Constitution and is liable to be struck down and liable to be declared null and void and of no effect to the extent it mandatorily provides for filing Form GST Tran 1 as condition precedent for availing Credit of eligible duties on goods and services in transit on the appointed day.

X. For that, the Petitioners alternatively submit that the wide, vague and unbridled delegation U/s 164 of the Central GST Act is unconstitutional in as much as it suffers from *vice* of excessive delegation of legislative powers in as much as the legislature has surrendered and abdicated it's essential Legislative functions in favour of the Central Government as

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the impugned rules infringes and taken away the substantive right of the Petitioners. It is humbly submitted that deprivation of property which is also a human right, constitutes essential functions of the legislature and cannot be delegated to the Central Government.

Y. For that, it is humbly submitted that the legislature must retain in it's own hands the essential legislative functions which consists of declaring the legislative policies and laying down the standard with sufficient clarity and only task of ancillary nature should be delegated and left to the delegate. The Legislature in the instant case while enacting Sec.164 has surrendered and abdicated its essential functions. The act of interfering with right to property under Article 300A constitutes essential functions of the Legislature and can not be delegated to the executive. The contentions of the Petitioners on this count is in the alternative and without prejudice to the contentions on other counts.

Z. For that, it is humbly submitted that powers conferred in the Central Government U/s 164 is arbitrary, unguided, unbridled and unchannelised and without any check and balance, in case delegation held to be within the framework of Section 164. For that, the wide, vague and unbridled delegation U/s 164 is unconstitutional in as much as it suffers from *vice* of excessive delegation of legislative

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powers in as much as the legislature has surrendered and abdicated it's essential functions in favour of the Central Government for the said rules/notifications provides for infringing with accrued/acquired right of the assessee, constitutes essential functions of the legislature and cannot be delegated to the Central Government.

AA. For that, the Petitioners most humbly submit that provision of Rule 117 of the Central Rule is unreasonable and thus arbitrary and thus offends Article 14 of the Constitution of India.

BB. For that, the Petitioners most humbly submit that the State action, executive or legislative, has to be tested for constitutional infirmities qua Article 14 of the Constitution. The act has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of healthy competition and equitable treatment. It should conform to the norms and rationale, informed with reasons and guided by public interest, etc. This is the mandate of Article 14 of the Constitution of India.

CC. For that, the Petitioners most humbly submit that the provisions of Rule 117 of the CGST Rules places an unreasonable and an unconscionable restrain on the freedom to carry on trade or business guaranteed under Article 19(1)(g) of the Constitution.

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DD. For that, Petitioners further submit that the provision of Rule 117 of the CGST Rules are confiscatory in nature and thus offends Article 300A of the Constitution of India.

EE. For that, the Petitioners most humbly submit that if two interpretations of statutes are possible, one of which renders the statute unconstitutional and/or *Ultra Vires* and another saves it from unconstitutionality, the Courts would prefer the latter construction by resorting to process of 'reading down' or 'reading up'.

FF. For that, the Petitioners most humbly submit that the reading up of the second proviso from the stand point of any of the aforesaid tests cannot be said to be a case of the judiciary adding to the words of the statute but has to be treated as ironing out of creases. Further, Courts always avoid a construction which leads to injustice and in doing so alters in the language of the statute to some extent.

GG. For that, even if it is accepted, for arguments sake, that impugned Rule 117 of the Central Rules which mandates filing/uploading of an application in the GSTN portal in form GST-Tran 1, is intra-vires to the Act, it is humbly submitted that credit of eligible duties in respect of goods or services in transit on the appointed day is a substantive right in terms of Section 140(5) of the Central GST Act, whereas Rule 117 of Central Rules are procedural

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in nature and that being the case it is an established principle of law that substantive rights cannot be denied for procedural infractions.

HH. For that, the Petitioners most humbly submit that in case of conflict between the substantive provisions of the Act in one hand and the procedural provision under the rules on the other an attempt must be made to reconcile the conflicting provisions by declaring such rule as directory and not mandatory.

II. For that, it is humbly submitted that in the case of Sambhaji and Other Vs Gangabai and Others reported in (2008) 17 SCC 117 it is held by the Hon'ble Supreme Court that procedures cannot be tyrant but only a servant, it is not an obstruction in the implementation of the provisions of the Act, but an aid, the procedures are hand maid and not the mistress, it is a lubricant and not a resistance. The relevant portion of the said judgment is set out below:-

> *12. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in the Judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive. …*

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13. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. … A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. …

14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

4. The Petitioners submit that, the Petitioners craves leave to amend, alter, delete or urge further grounds at the time of hearing of the present application.

5. The Petitioners submits that, it has no other equally efficacious adequate alternate remedy than to approach this Hon'ble Court under Article 226 of the Constitution of India. The remedy by way of writ(s), direction(s) and/or order(s) as prayed for herein, if granted will be adequate and complete.

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6. The Petitioners submit that, the Petitioners have not filed any other application except the present petition on the subject matter before this Hon'ble Court or before Hon'ble Supreme Court.

7. In the aforesaid circumstances, the Petitioners most humbly pray as under:

(a) Your Lordships may be pleased to issue writ of declaration and/or any other appropriate writ(s) declaring Rule 117 of the Central Goods and Services Tax Rules, 2017 and Form GST Tran-1 as *ultra vires* to Section 140(5) and Section 164 of the Central Goods and Services Tax Act, 2017 and also offends Article 14, Article 19(1)(g), Article 265 and Article 300A of the Constitution of India, 1950;

(b) Your Lordships may be pleased to issue writ of declaration and/or any other appropriate writ(s) declaring Section 164 of the Central Goods and Services Tax Act, 2017 as unconstitutional as it suffers from vice of excessive delegation;

(c) Your Lordships may be pleased to issue necessary writ(s), direction(s) and/or pass necessary order(s) directing the respondents to allow rectification of GST – Tran1, to enable credit of

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carry forward of Credit on eligible duties of goods and services in transit in electronic credit ledger in terms of Section 140(5) of the Central Goods and Services Tax Act, 2017, either by opening of GSTN portal or to allow it to be filed manually;

(d) Pending admission, hearing and final disposal of this application, Your Lordships may be pleased to issue writs(s) and/or direction(s) restraining the Respondents from resorting to or taking any coercive measure against the Petitioners;

(e) Your Lordships may be pleased to Grant ad-interim relief in terms of prayer under Para (d) above;

(f) Your Lordships may be pleased to award Costs of and incidental to this application be paid by the Respondents;

(g) Your Lordships may be pleased to issue order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice;

And for this act of kindness, the Petitioners shall, as in duty bound, ever pray.

Place: Ahmedabad