BEFORE IN THE HON'BLE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)
PUBLIC INTEREST LITIGATION
WRIT PETITION (CIVIL) NO. OF 2020

(A petition under Article 32 of the Constitution of India praying for a Writ of Mandamus or any other appropriate writs seeking issuance of specific guidelines and/or directions in respect of –
disallowance of Input Tax credit on the ground of non filling of return by supplier of goods rule 36(4) of CGST Act,2017 and

disallowance of Input Tax credit on the ground of non filling of Form GSTR 3B within the limitation prescribed u/s 16(4) of CGST Act,2017 and also on

the **simplification** of complex compliance and penal structure of Goods and services tax)

IN THE MATTER OF

Movement for GST Simplification (headed by Social Activist Mohini Bipinbhai Patel & others)

(PETTIONERS)

V.

Union of India, through the chairperson and members of Goods & Services Tax Council, Office of the GST Council Secretariat, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi-110 001

&

Central Board of Indirect Taxes and Customs (erstwhile Central Board of Excise & Customs) part of the Department of Revenue under the Ministry of Finance

(RESPONDENTS)

INDEX

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION SEEKING ISSUEANCE OF SPECIFIC GUIDELINES AND/OR IN RESPECT OF

- disallowance of Input Tax credit on the ground of non filling of return by supplier of goods rule 36(4) of CGST Act,2017 and
- disallowance of Input Tax credit on the ground of non filling of Form GSTR 3b within the limitation prescribed u/s 16(4) of CGST Act,2017 and
- simplification of complex compliance and penal structure of Goods and services tax

To,

The Hon'ble the Chief Justice of India

And His Companion Justices

of the Supreme Court of India.

The Special Leave Petition of the Petitioner above named

MOST RESPECTFULLY SHEWETH:

1. The present Writ Petition under Article 32 of the Constitution of India is being filed by the Petitioners to enforce fundamental rights, particularly Right to Equality (Article 14) guaranteed by the Constitution. The first Petitioner Ms. Mohini Bipinbhai Patel is a public spirited individual, and is social activist for the women empowerment and working as legal practitioner in the area of Civil and criminal justice.

ARRAY OF PARTIES

2. The Petitioner is a citizen of India, working as a legal practitioner and social activist, with annual income of about Rs. 4,00,000/- per annum, R/o F56, Shivam Park Society, Ajwa Road, Vadodara-390019. The email address of the Petitioner is adv.mohinipatel@gmail.com and mobile no. +91-6351761363. A true copy of the PAN Card of the Petitioner bearing PAN AXSPP3715C is attached herewith and marked as Annexure
3. The Petitioner does not have any personal interest or any personal gain or private motive or any other oblique reason in filing this Writ Petitioner in Public Interest. The Petitioner has not been involved in any other civil or criminal or revenue litigation, which could have legal nexus with the issues involved in the present Petition.
4. The Respondents are the Union of India, Union of India, represented by the chairperson and members of Goods & Services Tax Council Ministry of Finance and Central Board of Indirect Taxes and Customs (erstwhile Central Board of Excise & Customs) part of the Department of Revenue under the Ministry of Finance, which is the appropriate ministry dealing with issues of tax administration of Goods and services tax and safeguarding the underlying fundamental rights of the citizens involved in the aspects of Goods and services tax (GST).

FACTS OF THE CASE

5. The brief facts that give rise to the present Writ Petition are as follows:
6. The Petitioner firmly believes that the Indian constitution guarantees justice and equality for all persons. Therefore, he has moved this Writ Petition under Article 32 of the Constitution of India, which seeks to invoke the most salient fundamental right, the right to equality guaranteed under Article 14.
7. It is humbly submitted that Central Board of Indirect Taxes and Customs (erstwhile Central Board of Excise & Customs) has issued **Rule 36(4)** of the CGST Rules, 2017, stating that provisional credit can be claimed in the GSTR-3B only to the extent of 10%* of eligible ITC reflected in the GSTR-2A.

   *With effect from 1 Jan 2020; Was earlier restricted to 20% for the period from 9 Oct 2019 to 31 Dec 2019
8. To make the simple interpretation of the above rule, it says that only 10% of Input Tax credit can be claimed which is showing on the portal of GST. It means the Tax credit of such purchases which were not updated or filled by the supplier shall not be considered while computation of the GST liability.
9. It has been clarified through the Circular No. 123/42/2019-Central Tax dated 11-11-2019 by the CBIC, that the taxpayer needs to ascertain the ITC from the auto-populated Form GSTR 2A as available on the due date of filing of Form GSTR-1, i.e., 11th of the succeeding month for monthly

return filers and for quarterly return filers last day of the month succeeding the end of the quarter. It means if any supplier is late in filling the GSTR 1, the buyer is going to suffer the same and shall pay the amount of GST again which already paid or accrued to the supplier. This creates the unnecessary burden on the genuine businesses to arrange extra working capital for payment of additional GST.

10. For better analysis, we would like to draw attention of your good honor on the historical principles of Goods and services tax previously known as Valued added tax. (the source of information is Wikipedia)

"A value-added tax (VAT), known in some countries as a goods and services tax (GST), is a type of tax that is assessed incrementally. VAT essentially compensates for the shared service and infrastructure provided in a certain locality by a state and funded by its taxpayers that were used in the elaboration of that product or service."

11. In the recent publication from CBIC, Govt of India named "GOODS AND SERVICE TAX (GST) CONCEPT & STATUS", The government itself pronounced the avoidance of cascading effect through successful implementation of GST. The relevant portion of text is reproduced here:

5. NEED FOR GST IN INDIA:

5.1 The introduction of CENVAT removed to a great extent cascading burden by expanding the coverage of credit for all inputs, including capital goods. CENVAT scheme later also allowed credit of services and the basket of inputs, capital goods and input services could be used for payment of both central excise duty and service tax. Similarly, the introduction of VAT in the States has removed the cascading effect by *giving set-off for tax paid on inputs as well as tax paid on previous purchases and has again been an improvement over the previous sales tax regime.*

5.2 But both the CENVAT and the State VAT have certain incompleteness. The incompleteness in CENVAT is that it has yet not been extended to include chain of value addition in the distributive trade below the stage of production. Similarly, in the State-level VAT, CENVAT load on the goods has not yet been removed and the cascading effect of that part of tax burden has remained unrelieved. Moreover, there are several taxes in the States, such as, Luxury Tax, Entertainment Tax, etc. which have still not been subsumed in the VAT. Further, there has also not been any integration of VAT on goods with tax on services at the State level with removal of cascading effect of service tax.

5.3 CST was another source of distortion in terms of its cascading nature. It was also against one of the basic principles of consumption taxes that tax should accrue to the jurisdiction where consumption takes place. Despite remarkable harmonization in VAT regimes under the auspices of the EC, the national market was fragmented with too many obstacles in free movement of goods necessitated by procedural requirement under VAT and CST.

5.4 In the constitutional scheme, taxation powers on goods was with Central Government but it was limited up to the stage of manufacture and production while States have powers to tax sale and purchase of goods. Centre had powers to tax services and States also had powers to tax certain services specified in clause (29A) of Article 366 of the Constitution. This sort of division of taxing powers created a grey zone which led to legal disputes. Determination of what constitutes a goods or service is difficult because in modern complex system of production, a product is normally a mixture of goods and services.

5.5 As can be seen from the previous paragraphs, ***India moved towards value added taxation both at Central and State level, and this process was complete by 2005. Integration of Central VAT and State VAT therefore is nothing but an inevitable consequence of the reform process.*** *The Constitution of India envisages a federal nature of power bestowed upon both Union and States in the Constitution itself. As a natural corollary of this, any unification of the taxation system required a dual GST, levied and collected both by the Union and the States.*

12. The above paragraphs envisages that, Goods and services tax has been guaranteed the value addition tax structure and avoidance of any kind of cascading effect of tax already paid on the underlying goods.

13. The sub rule (4) of the rule 36 newly inserted, blocking the credit up to 90% of the amount not showing on the portal, though such goods procure legitimately with the proper documentation.

14. It is worth mention to draw attention of your good honor that in recent past, Hon'ble Supreme Court in the case of **Commissioner of Trade & Taxes, Delhi and others Vs. Arise India Limited and others [TS-2-SC-2018-VAT]**, has dismissed the Special Leave Petition filed by the Revenue against the decision of the Hon'ble High Court of Delhi in the case of **Arise India Limited and others Vs. Commissioner of Trade & Taxes, Delhi and others [TS-314-HC-2017(Del)-VAT]** ("Arise India case"). The Hon'ble High Court of Delhi held Section 9(2)(g) of Delhi VAT Act to the extent it disallows Input tax credit (ITC) to purchaser **due to default of selling dealer in depositing tax, as violative of Articles**

14 and 19(1)(g) of the Constitution of India.

It is important here to note the relevant provisions made for ITC under the Central Goods and Services Tax Act, 2017("the CGST Act") which states that every registered person shall be entitled to take credit of input tax charged on the supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Therefore, the moot questions which arise for consideration are as follows:

1. Whether the above judgment will be read in harmony with the provisions of the CGST Act or it is just limited to the provisions of the DVAT Act?
2. Whether under the CGST Act also credit would not be denied to the purchasing dealer for non-payment by selling dealer, if the purchasing dealer acted bonafide?

Drawing reference from the above judgment which carves out distinction between the purchasing dealers who have bonafide transacted with the selling dealer by taking all precautions as required under the statue and those that have not taken precautions, ideally, otherwise eligible ITC should not be denied to the bonafide purchasing dealer merely on fault of selling dealer. It should not be made the responsibility of the purchasing dealer to ensure that the tax is deposited by the selling dealer to the extent transaction is bonafide.

15. Further the Advisory notices has been issued through

the GST Central / State authorities invoking the provisions of Section 16(4) of the CGST Act,2017. The advisory notices received on email to various tax payers have been reproduced as under:

> *Dear GSTNXXXX,*
>
> *1. As you are aware, in terms of provisions of Section 16(4) of the CGST Act, 2017 any of the registered persons filing their GSTR-3B return in respect of the last two financial years (July 2017-March 2018 and 2018-19) after 30.04.2019 and 20.10.2019 respectively, could not have availed any credit on invoices or a debit note pertaining to the relevant financial year except in respect of IGST paid on import of goods by such registered persons. Accordingly, any credit availed in violation of provisions of Section 16(4) is inadmissible.*
>
> *2. Records indicate that you have filed your GSTR-3B return for Apr-2018 after the said due dates in which you have availed credit of Rs.XXXX which is inadmissible under Section 16(4) of the CGST Act, 2017.*
>
> *3. You are advised to deposit the amount equivalent to tax paid using such inadmissible credit through FORM DRC-03 with applicable interest.*
>
> *4. In case the opportunity for voluntary compliance as suggested is not availed, appropriate action for recovery of tax paid using such inadmissible credit with interest and imposition of penalty shall be initiated as per the law.*

16. The Tax authorities have invoked the provisions of Section 16(4) in the cases where Form GSTR3B were itself not filled. It is also worth mention that such form is filled with the late fees prescribed. If the authority has excused the default of late filling through fees collection, then allowance of ITC cannot be restrained in such cases.

17. The provisions of Section 16(4) shall be invoked in the cases where the credit of past period has been claimed in subsequent period as mentioned in the section. Whereas the monthly form is pending itself, the ITC for the given period of return can not be restrained even though return filled lately.

18. If the tax authorities are not ready to allowance of ITC, it draws in to the situation of double payment of tax, which is itself against the basic principle of Goods and services tax and infringement of rights prescribed in Article 14.

19. The tax authorities shall take a rational stand, where they collect the late fees on one hand and also disallow the ITC on other.

20. We hereby submit our contentions to your good honor regarding a cent percent misadventure in implementation of Goods and Services Tax.

   a. Any new system of Taxation shall be implemented rationally and smoothly with co operation to all the stakeholders including Tax payers. The system of GST with faulty portal has been introduced on July 1, 2017 and have been started to levy penalty / late fees from Oct 2017, without giving proper time to adapt the new system.

   b. It has been prime responsibility of Government to provide a proper **infrastructure** to tax payers to comply with the statutory requirements. It has been noted that government has not opened a single tax filling center where a new and small tax payer who may not have computer or internet system available or may not have sufficient knowledge to file the returns with accuracy, can file their returns in such center.

c. There has been well settled principle of **right to amend** or revision which shall be given by all the statute to the parties concerned, whereas the statue of GST does not allow the taxpayer to amend or revise any of the forms like GSTR3B or returns like GSTR 1, GSTR 9 or GSTR 9C. It has created a chaos and confusion to all the taxpayers.

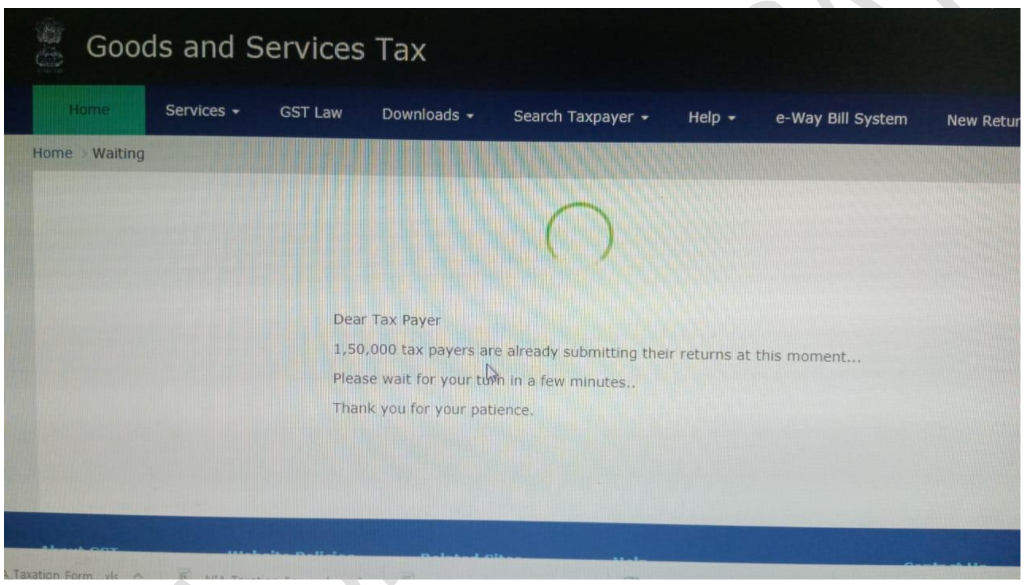
d. Timing of forms/ Return filling

It has been noted that Government has introduced GST system with the requirements to file GSTR 1 and GSTR 3 on monthly basis at initial stage. But due to under prepared GST portal, the respondents have introduced the Form GSTR 3B, which was temporary arrangement for ascertaining Tax liability and payment for the same. The respondents has enforced the common businessman with partial compliance on 10^{th} of successive month and then 20^{th} for payment of tax except for composite tax payers.

It has been noted that economic scenario has not been allowing to sell the goods on Business to business on cash basis. All the businesses allow the credit period which normally tends from 30 to 60 days. Where as the respondent has enforced payment of tax within 20 days from the end of the month. Here small businesses had suffered very badly and lost their half of working capital in payment of GST in advance.

Whereas Government has also came up with the idea to pay taxes for provisional credit under rule 36(4) which is unjust and abusive to honest tax payer.

e. There has been 30 months around of implementation of GST whereas the portal starts misbehaving and not working since 3 days before the due date. We hereby reproduced the screen shot of the message we receive during return filling:



f. It is also important to note that though Respondents relaxed some of the tax payers from filling annual returns for FY 17-18, the others are still facing technical issues of portals while filing the same.

g. It has been requested to respondents many times that as the GST system is new and portal also not well prepared, the tax payers make mistakes in payment of tax in specific heads. There are more than 180000 registered grievances for payment of tax in wrong head.

h. The respondents has levied the unlimited late fees for non filling of form GSTR 3B and now GSTR 1 within due date. The taxpayer is liable to file a GST Return within due date. Here the GST return is in two parts, the Respondents have levied the penalty for both the forms. This is preposterous and unjust act on the part of the respondent. A RTI reply has revealed that the respondent has unlawfully collected Rs.2204/- crore from 01.07.2017 to 31.01.2019. (the copy of the same has been annexed) This figure itself reflects the malicious intentions of the respondent to collect unjustifiable huge amount of penalty without making the complex GST structure simple.

21. The Petitioner has filed this Petition for directions to protect and safeguard fundamental rights of all GST taxpayers and other stake holders under Article 14 of the Constitution, since the Petitioner has no alternate efficacious remedy but to approach this Hon'ble Supreme Court under Article 32 of the Constitution of India for the reliefs prayed for herein.

22. The Petitioner has for the first time filed this Petitioner in respect of the subject-matter, i.e., for issuance of directive in respect of safeguarding fundamental rights under Article 14 of the taxpayers of GST and other stakeholders against the aforesaid Respondents in India.

23. That this Hon'ble Court has the jurisdiction to entertain and try this Petition.

24. That the Petitioner craves leave to alter, amend or add to this Petition.

25. That the Petitioner seeks leave to rely on documents, a list of which, along with true typed copies has been

annexed to this Petition.

26. That this Petition has been made bona fide and in the interest of justice.

27. That the Petitioner has not filed any other Petition before this Hon'ble Court or before any other Court seeking the same relief.

PRAYER

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28. In the facts and circumstances, it is most respectfully prayed that your Lordships may graciously be pleased to:

a. Issue a Writ, Order, or Direction in the nature of Mandamus to all Respondents to discard the insertation of sub rule (4) to the rule 36 of the CGST ACT,2017

b. Issue a Writ, Order, or Direction in the nature of Mandamus to all Respondents not to invoke the provisions of section 16 (4) in the case of late fillings of monthly form GSTR 3B and shall admit the valid amount of ITC available.

c. Issue a Writ, Order, or Direction in the nature of Mandamus to all Respondents to credit the late fees collected from 01.07.2017 to 31.03.2019 in the cash ledger of the tax payers.

d. Issue a Writ, Order, or Direction in the nature of Mandamus to all Respondents to allow amendment and revision in the all forms of GST portal for reasonable time limit from filling original one.

e. Issue a Writ, Order, or Direction in the nature of Mandamus to all Respondents to improve the capacity of portal and shall also not levy late fees/ penalties if the portal is down and shall also give reasonable extension in the time limit.

f. Issue a Writ, Order, or Direction in the nature of Mandamus to all Respondents to develop the grievance redressal system adequate, accurate and responsible.

g. Issue a Writ, Order, or Direction in the nature of Mandamus to all Respondents to exempt the annual fillings for the financial year 2017-18 & 2018-19.

h. Issue a Writ, Order, or Direction in the nature of Mandamus to all Respondents to develop single head payment system, where taxpayers shall not be held responsible for payment in wrong head.

i. Issue a Writ, Order, or Direction in the nature of Mandamus to all Respondents to put a capping of maximum late fees/ penalties for each default.

j. Issue a Writ, Order, or Direction in the nature of Mandamus to all Respondents to simplify a single GST return system, where Summary, sales list and purchase list shall be uploaded simultaneously.

k. Issue a Writ, Order, or Direction in the nature of Mandamus to all Respondents to make the quarterly payment and return filling for the taxpayers having a turn over upto 1.5 crores.

l. Issue a Writ, Order, or Direction in the nature of Mandamus to all Respondents to avoid the unnecessary communication to taxpayers via email and SMS.

m. Issue a Writ, Order, or Direction in the nature of Mandamus to all Respondents to develop the system to identify the actual defaulters of non filling returns rather making responsible the buyer of the goods to pay the taxes for un-reconciled purchase.

n. Issue a Writ, Order, or Direction in the nature of Mandamus to all Respondents to develop the environment of co-operation with the taxpayers rather creating fear and terror in the business community.

o. Pass such other orders as may be deemed fit in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Drawn By: Filed by:

MOHINI B. PATEL ASHISH A. SHAH

PLACE : VADODARA (ADVOCATE FOR PETITIONER)

DRAWN ON: 28/01/2020

FILED ON:

IN THE HONOURABLE SUPREME COURT OF INDIA

Writ Petition No. ___________/ 2020

PETITIONER: **MOHINI B. PATEL & OTHERS**

Versus

RESPONDENTS: 1. Union of India represented by office of GST council and CBIC

AFFIDAVIT

I, MOHINI BIPINBHAI PATEL, d /o BIPINBHAI PATEL aged 31 YEARS, r/o F 56, SHIVAM PARK SOC, AJWA ROAD, VADODARA the Deponent do hereby solemnly affirm as under:-

1. That I am competent to file this affidavit.
2. That the accompanying Writ Petition has been read by me and that I have understood its contents.
3. That the facts mentioned in the Writ Petition are true and correct to the best of my knowledge and brief and that nothing material has been concealed therein.
4. That the grounds contained in Para 7, 16 and 20 are based on legal advice to me and that Para 28 is Prayer.

DEPONENT

VERIFICATION

I, above named deponent, do hereby verify that the contents of paragraphs 1 to 4 of the foregoing affidavit are true to my personal knowledge and belief and that nothing material has been concealed therein.

Verified and signed on this …… day of ………. 2020

DEPONENT

Government of India
Office of the Principal Chief Controller of Accounts
Ministry of Finance
Central Board of Indirect Tax & Customs
A.G.C.R. Building, New Delhi
Ph. No.: 011-23702308, 23702274

14/02/2019

Comp/Rev/4.2/10/RTI(48)/2018-19/1552

To,

Ms Kusum Panwar,
Accounts officer & CPIO,
O/o Pr. CCA, CBEC,
New Delhi

Sub: - Information under RTI Act, 2005-reg.

Sir,

In reference to your letter no. Coord/2(1)/RTI/AM/2018-19/542 dated 08/02/2019 regarding information under RTI Act, 2005. The reply submitted is as under.

INFORMATION SOUGHT	RESPONSE
Kindly update about amount of total collection of late fees under GST since inception till date	Total Fees collected from GST **(inclusive late fees)** from 01.07.2017 to 31.01.2019 is Rs. 2202 crore.
Kindly update about amount of total collection of Interest under GST since inception till date	Total Interest collected from GST from 01.07.2017 to 31.01.2019 is Rs. 1581.74 crore.
Kindly update about monthly breakup of collection of late fees under various GST Acts such as CGST, SGST, IGST since inception till date	Monthly breakup of GST Fees collection (inclusive late fees) various GST is enclosed Annexure "A"
Does the monthly GST collection figures published via press release includes late fees and interest.	The information regarding inclusion of late fees and interest in GST collection published via press release includes late fees and interest is not available in this office.
Kindly update about monthly breakup of collection of late fees form wise.	Monthly breakup of GST Fees collection (inclusive late fees) form wise is not available in this office.

Sr. AO (Account)

Annexure "A"

O/o Pr. CCA CBIC

FEES

FY 2017-18 (FEES)						
Month	0005-CGST	0007-UTGST	0008-IGST	0009-Conp. Cess	Total (in actual)	Total (in crore)
July	18123	0	54	4	18181	0.00
August	41342512	0	1692646	186543	43221701	4.32
September	337894233	0	8166266	1179299	347239798	34.72
October	1468138695	0	12668906	6041684	1486849285	148.68
November	304631892	0	4515143	3594594	312741629	31.27
December	512840038	0	10876784	1566358	525283180	52.53
January	905953383	0	16215064	2511609	924680056	92.47
February	893037003	0	9592904	2017198	904647105	90.46
March	1076140129	0	3346506	1197814	1080684449	108.07
March Sy I	-1965032419	0	312846	650	-1964718923	-196.47
March Sy II	2070	32780	6736770	0	6771620	0.68
Total	**3574965659**	**32780**	**74123889**	**18295753**	**3667418081**	366.74

FY 2018-19 (FEES)						
Month	0005-CGST	0007-UTGST	0008-IGST	0009-Conp. Cess	Total (in actual)	Total (in crore)
April	1191447121	0	4898583	992451	1197338155	119.73
May	1571478221	0	8674428	1269457	1581422106	158.14
June	1708057515	0	8945416	1689066	1718691997	171.87
July	2160621748	0	8611788	808356	2170041892	217.00
August	2072339894	292570	1356401	1335294	2075324159	207.53
September	1858900628	25535	2476224	3668515	1865070902	186.51
October	2675206600	4720	7797614	1583329	2684592263	268.46
November	2148266061	7500	4394001	1176938	2153844500	215.38
December	2217519307	515	2059024	1603133	2221181979	222.12
January	679716422	325	5071347	318506	685106600	68.51
Total	**18283553517**	**331165**	**54284826**	**14445045**	**18352614553**	**1835.26**

Sr. AO