

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF NOVEMBER, 2019

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE PRADEEP SINGH YERUR

WRIT APPEAL NO.1840 OF 2019 (T-RES)

BETWEEN:

1. THE UNION OF INDIA
THROUGH ITS REVENUE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
128-A/NORTH BLOCK
NEW DELHI – 110 001
2. THE CENTRAL BOARD OF
INDIRECT TAXES AND CUSTOMS
THROUGH ITS CHAIRMAN
NORTH BLOCK
NEW DELHI – 110 001
3. THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR, TOWER II
JEEVAN BHARTI BUILDING
JANPATH ROAD
CONNAUGHT PLACE
NEW DELHI – 110 001
4. THE ASSISTANT COMMISSIONER
OF CENTRAL TAX
3RD FLOOR, CRESCENT ROAD
BENGALURU - 560 001
5. THE COMMISSIONER OF CENTRAL TAX
BENGALURU SOUTH
C.R. BUILDING
QUEEN'S ROAD

BENGALURU – 560 001
KARNATAKA

...APPELLANTS

(BY SHRI VIKRAM A.HUILGOL, ADVOCATE)

AND:

1. M/S. ARAVIND LIFESTYLE BRANDS LTD.
DU PARC TRINITY
10TH FLOOR, 17, M.G. ROAD
BENGALURU – 560 001
(REPRESENTED BY SHRI SHIBU T.K.
SENIOR MANAGER TAXATION)
2. THE STATE OF KARNATAKA
BY ITS GOVERNMENT PLEADER
HIGH COURT
BENGALURU – 560 001
3. THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAX
LGSTO-075, DVO-06
BENGALURU – 560 001
KARNATAKA

... RESPONDENTS

(BY SHRI RAVI RAGHAVAN, ADVOCATE A/W
SMT. NEETHU JAMES AND
SMT. MANASI KHARE, ADVOCATES FOR R1;
SHRI V.G.BHANU PRAKASH, AGA FOR R2 AND R3)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT, 1961, PRAYING TO ALLOW
THIS WRIT APPEAL, SET ASIDE THE IMPUGNED ORDER DATED
26.04.2019 PASSED BY THE LEARNED SINGLE JUDGE IN WRIT
PETITION NO.19076/2019 [T-RES] AND ETC.

THIS APPEAL COMING ON FOR PASSING ORDERS THIS
DAY, **CHIEF JUSTICE** DELIVERED THE FOLLOWING:

JUDGMENT

1. Heard the learned Counsel appearing for the appellants and the learned counsel appearing for the first respondent (writ petitioner).

2. A brief reference to the factual aspects will be necessary. On 1st July 2017, the implementation of GST regime in India commenced. On 30th November 2017, the first respondent filed its Form GST TRAN-1. On the same day, the form was amended by the first respondent. However, the first respondent did not mention the quantity of the goods held in stock in Column 7B of Form GST TRAN-1. Though Rule 117 of the Central Goods and Services Tax Rules, 2017 (for short 'CGST Rules') which prescribed filing of Form GST TRAN-2 came into force on 28th June 2017, a notification was issued on 7th March 2018 by which sub-rule (4) of Rule 117 of CGST Rules was amended. The amendment permitted submission of a statement in Form GST TRAN-2 by 31st March 2018 or within such period as may be extended by the Commissioner on the recommendation of GST Council for each of six tax periods.

3. The case of the first respondent is that though an attempt was made on 28th March 2018 to file TRAN-2, the same could

not be done due to an error message. The error message was created as Form GST TRAN-1 was not complete in all respects as the first respondent had not incorporated the quantity of goods held in stock in Form GST TRAN-1. According to the case of the first respondent, a complaint was lodged and even the first respondent approached the Central Board of Indirect Taxes and Customs (second appellant) for redressal of its grievance regarding non-filing of GST TRAN-2. In the meanwhile, the due date for filing Form GST TRAN-2 was extended till 30th June 2018. A common notification was issued on 10th September 2018 by which the registered persons filing a declaration in Form GST TRAN-1 by 31st March 2019 could submit the statement in Form GST TRAN-2 by 30th April 2019. After making a representation to the fourth and fifth appellants, a writ petition was filed by the first respondent. By the impugned order, the learned Single Judge directed the fifth appellant to redress the grievance of the first respondent to enable the first respondent to file Form GST TRAN-2. In paragraph 7, it was observed that in terms of the Circular dated 3rd April 2018, the fifth appellant is required to redress the grievance of the first respondent to enable the petitioner to file Form GST TRAN-2 within the time prescribed.

4. The submission of the learned appearing for the appellants is that the observations made by the learned Single Judge at paragraph 7 may not be correct. His submission is that after the time prescribed by law for filing Form GST TRAN-2 has expired, the learned single Judge has virtually issued a direction to the fifth appellant to ensure that the first respondent is in a position to file Form GST TRAN-2. The learned counsel relied upon the decision of the Apex Court in the case of ***Union of India and Another v. Kirloskar Pneumatic Co. Ltd.***¹ He submitted that in exercise of the jurisdiction under Article 226 of the Constitution of India, such a direction which is contrary to the statutory provisions cannot be issued by the High Court. He submitted that though there are similar directions issued by various High Courts, the issue whether such directions can be issued in exercise of writ jurisdiction is required to be gone into. He submitted that the order enabling the first respondent to file TRAN-2 is contrary to the provisions of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act') and Rule 117 of CGST Rules.

¹ (1996)4 SCC 453

5. The learned counsel appearing for the first respondent invited our attention to the view consistently taken by various High Courts. He invited our attention to some of the latest decisions of various High Courts taking a similar view.

6. We have carefully considered the submissions. As noted earlier, there is no dispute that Form GST TRAN-1 was submitted by the first respondent and there was a *bona fide* error committed by the first respondent by not incorporating the quantity of goods held in stock in Column 7B of the prescribed form. On 7th March 2018, a notification was issued by the Central Board of Excise and Customs by which the Central Goods and Services Tax (Second Amendment) Rules, 2018 were published which enabled a registered person to submit a statement in Form GST TRAN-2 by 31st March 2018 or within such extended period as may be decided by the Commissioner. Accordingly, the first respondent attempted to file TRAN-2 which could not be filed due to an error generated as a result of the failure of the first respondent to incorporate the quantity of goods held in stock in Column 7B of Form GST TRAN-1. There is no dispute that there was a *bona fide* mistake committed by the first respondent while filling Form GST TRAN-1 in early days of GST regime. Even the learned Counsel appearing for

the appellants accepted that there are several decisions of various High Courts taking a similar view as the learned Single Judge has taken. On a query made by the Court, he informed the Court that so far the Apex Court has not interfered with any of the orders passed by various High Courts.

7. We have referred to the decisions relied upon by the first respondent including the decision of a Division Bench of Delhi High Court in the case of ***M/s. Blue Bird Pure Pvt. Ltd. vs. Union of India and Others*** in W.P.(C) No.3798/2019. It is this decision which is subsequently followed by many High Courts. Coming to the said decision of the Delhi High Court, in paragraph 12, the High Court recorded satisfaction that although there was a failure on the part of the petitioner to fill up the data concerning its stock in Column 7(B) of Form TRAN-1, the error was inadvertent. Even in the present case, there is no dispute that the error committed by the first respondent during early days of GST regime was not intentional. We must note here that relying upon the said decision, a Division Bench of the Punjab and Haryana High Court rendered a decision dated 4th November 2019 in CWP No.30949/2018. The said decision quotes all the earlier decisions of various High Courts. The said decision also refers to and relies upon a decision of the Apex

Court in the case of ***MRF Ltd. v. Assistant Commissioner (Assessment) Sales Tax***². In paragraph 38 of the said decision of the Punjab and Haryana High Court, it was observed that by not allowing the right to carry forward the CENVAT credit for not being able to file the Form GST TRAN 1 within the due date may violate the mandate of Clause (g) of Article 19(1) of the Constitution of India. While agreeing with the various decisions of the Delhi High Court and the Gujarat High Court, the Division Bench of the Punjab and Haryana High Court passed a similar order.

8. Thus, this is a case where in very early days of implementation of GST, one column was inadvertently not filled in Form GST TRAN-1. The Form GST TRAN-1 was filed within the time stipulated by law. The learned Single Judge and the various High Courts have passed orders granting permission to either submit Form GST TRAN-1 electronically by opening the online portal for that purposes or allowing the petitioner to tender form manually on or before 15th October 2019. This was done as the Form GST TRAN-2 could not be filed as there was an inadvertent omission in one column by failing to mention the quantity of goods held in stock. Therefore, we do not find that

² 2006(206) ELT 6 (SC)

any illegality has been committed by the learned Single Judge while passing the impugned order. It cannot be said that the order of the learned Single Judge and especially the observations made in paragraph 7 of the order are contrary to the provisions of the CGST Act and CGST Rules. We, therefore, concur with the view taken by the Delhi High Court as well as the Punjab and Haryana High Court. Hence, the decision in the case of ***Union of India and Another v. Kirloskar Pneumatic Co. Ltd.*** (supra) will have no application to the facts of the case.

Accordingly, there is no merit in the appeal and the same is dismissed.

The pending interlocutory applications do not survive for consideration and they stand disposed of.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

hkh.