

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7383 of 2020

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M/S SK GREEN HOME APPLIANCES PVT. LTD.
Versus
UNION OF INDIA

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Appearance:

MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1
Mr. Devang Vyas ASG, for UOI
Mr. Utkarsh Sharma, for the respondent State and its authorities

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CORAM: **HONOURABLE MS. JUSTICE SONIA GOKANI**
And
HONOURABLE MR. JUSTICE N.V.ANJARIA

Date : 11/06/2020

ORAL ORDER
(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

Notice returnable forthwith.

2. Learned Assistant Solicitor General of India Mr. Devang Vyas waives service of Notice on behalf of Union of India and learned AGP Mr. Utkarsh Sharma waives service of Notice on behalf of respondent State and its authorities.

3. This is a petition preferred under Article 226 of the Constitution seeking directions to the respondents to permit the petitioner to file revision of GST TRAN-1 electronically or manually and allow the credit of the Input Tax Credit (ITC) of Rs. 16,07,556/- for the goods held in stock as claimed in accordance with section 140(3) of the Central Goods and Services Tax Act, 2017 in its online electronic credit ledger for payment of its output tax liability.

4. It is demonstrated from the petition that the petitioner already had filed GST TRAN 02 and it claimed Rs. 11, 29,000/- as a credit. Copy of the GST TRAN 02 filed, is forming part of the record of the petition. It is averred that by a *bona fide* misunderstanding of the Accountant of the petitioner who was under the impression that the petitioner was only entitled to 60% of the credit, GST TRAN 02 came to be fled. It is averred in the petition that in fact the petitioner would be entitled to the entire amount of credit by filling GST TRAN 01. Therefore, there remains differential amount of credit of Rs. 4,78,556/-.

5. It is pointed out by the petitioner that specific right given under section 140 of the CGST Act, 2017, could not be curtailed or defeated on account of procedural lapse. Relying on the decision of this court rendered in case of **M/s. Siddharth Enterprises through Partner Mahesh Liladhar Tibdewal vs. the Nodal Officer in Special Civil Application No. 5758 of 2018 and allied matters**, it is urged that mere procedural mistake in filling of form GST TRAN 01 could not be held as a ground for precluding the petitioner to claim the right even under the existing provisions.

6. We have heard learned advocate Mr. Avinash Poddar for the petitioner. On the lines of the petition, he made detailed submissions. He drew our attention to the fact that two communications have already been sent to Deputy State Tax Commissioner as well as State Tax Commissioner respectively on 5.8.2019 and 20.11.2019. He urged that both these communications have not been replied to though much of time is elapsed. He also agrees that according to him the decision of this

court of September, 2019 would bind the authorities which ought to have responded to the last communication of November, 2020 in wake of the binding decision.

7. Learned AGP Mr. Utkarsh Sharma requested that notice may not be issued and short time be accorded to him to obtain required information from the authorities. Mr. Sharma has urged that the petitioner ought to have approached the concerned department even if there has been no response as direct approach in this court by way of writ petition is not desirable. He further submitted that if opportunity is given to him, he would take further instructions from the department and let the court know of the reasons of non-response from the authorities till date.

8. Having heard the learned advocates for the respective parties and having noticed that the petitioner had already filled-in the form GST TRAN 02 and has taken credit worth of Rs. 11, 29,000/- which is now sought to be changed to TRAN 01 giving reason of procedural mistake committed by an accountant of the petitioner, it would be apt for this court not to entertain this petition at this stage. Whether there is a procedural lapse and whether such filling of GST TRAN 01 is permissible, are the aspects to be gone into and decided by the competent authority, to which the petitioner has already addressed communication way back in August and September, 2019. Let the department respond to the same as it is its bounden duty to either except to the request or to deny. It is only after the decision is rendered by the authorities, it will be open for the petitioner to take a further legal recourse in accordance with law.

9. While not entertaining this petition and not touching the merit part of the case of the petitioner, the respondent Nos. 6 to 8 are directed to respond to the communication of the petitioner within four weeks from the date of receipt of this order.

10. With the above, the petition is disposed of.

11. Disposal of this petition shall not come in the way of the petitioner to approach any authority including approaching this court, as this court has not entered into the merits of the case of the petitioner, after the decision of the authority comes and he is aggrieved by that.

12. Learned advocate for the petitioner shall supply copies of the petition to learned ASG and AGP, who both shall communicate the respective respondents for whom they appear about passing of the present order.

THE HIGH COURT
OF GUJARAT

(SONIA GOKANI, J)

WEB COPY

MISHRA AMIT V.

(N.V.ANJARIA, J)