THE HIGH COURT OF MADHYA PRADESH

Writ Petition No.4974/2020
(Ankit Babeley Vs. State of M.P. and others)

Jabalpur, Dated: 15.07.2020

Hearing convened through Video Conferencing:

Mr. Abhishek Oswal, Advocate for the petitioner.

Mr. Pushpendra Yadav, Additional Advocate General for the respondents No.1 and 2/State.

Mr. Gajendra Singh Thakur, Advocate for the respondent No.3 and 4.

The petitioner has approached this Court under Article 226/227 of the Constitution of India claiming following reliefs:-

> "1. To direct the respondents No.2 to grant an opportunity to the petitioner to file Trans 1 before due date i.e. 31.03.2020.
>
> 2. Yours Lordship may be please to issue a writ of mandamus directing the Respondent No.2 to allow filing in Form GST Trans 1 to enable to claim transitional credit of eligible duties in respect of inputs held in stock on the appointed day in terms of Section 140(3) of CGST Act, 2017 by a writ in the nature of certiorari/mandamus and/or suitable writ, order or direction in the nature of writ be issued against the inaction of the Respondent No.2.
>
> 3. Your Lordships may please to issue a writ or declaration or any other writ for declaration of due date contemplated under Rule 117 of the CGST Rules, 2017 to claim transitional credit as being procedural in nature and thus merely directory and not a mandatory provision.
>
> 4. Any other relief considered expedient and just under the facts of the case by the Hon'ble Court may kindly be allowed along with cost of the petition to the petitioner."

Learned counsel for the petitioner inter alia contended that the petitioner is registered as work contractor and has been regularly filing his returns since 2013. For the months April to June, 2017, the petitioner had filed his return for VAT in Form 10 and got rebate of Rs.7,63,070/- to be carried forward in Trans 1. The Central Board of Indirect Taxes and

Customs through Government of India, Ministry of Finance issued an order No.1/2020 GST dated 7.2.2020 in supersession of earlier order no.1/2019 GST dated 31.01.2019 under sub-rule (1A) of Rule 117 of the Central Goods and Service Tax Rules, 2017 (for short "the Rules") extending the deadline to file Trans 1 upto 31.03.2020. Earlier also the Board had extended the due date for filing Trans-1 from time to time. Learned counsel for the petitioner referred to Section 140 of the Central Goods and Service Tax Act, 2017 (for short "the Act") and Rule 117 of the Rules to the effect that the registered person should not be debarred to file his Trans 1, who could not file the same within time due to technical difficulties. Sub-section (3) of Section 140 of the Act provides for substantive right which cannot be curtailed or defeated on account of procedural lapses.

Reliance was placed by the petitioner upon a judgment of the Division Bench of Punjab and Haryana High Court in the case of ***Adfert Technologies Pvt. Ltd. Vs. Union of India & Ors (CWP No.30949/2018 (O&M) decided on 4.11.2019*** to contend that in the said case, the Division Bench of Punjab and Haryana High Court allowed the petition directing the respondents to permit the petitioners to file or revise the already filed incorrect TRAN-1, either electronically or manually, and liberty was granted to the respondents to verify genuineness of claim of petitioners but it was also held that nobody could be denied to carry forward legitimate claim of CENVAT/ITC on the ground of non-filing of TRAN-1 by 27.12.2017. To fortify his contention, learned counsel for the petitioner also placed reliance upon a judgment of the Division Bench of Gujarat High Court in the case of ***M/s Siddharth Enterprises through Partner Mahesh Liladhar Tibdewal Vs. The Nodal Officer (R/Special Civil Application No.5758/2019 & other connected cases, decided on 6.9.2019)*** and of the Delhi High Court in ***Krish Automotors Private Limited Vs. Union of India and others (W.P.(C) No.3736/2018 decided on 16.9.2019***. It was further stated that against the judgment of the High Court of Punjab and Haryana in ***Adfert Technologies Pvt. Ltd's case. (supra)***, a Special Leave to Appeal (C) No.4408/2020 preferred before the Supreme Court by the Union of India and others was dismissed on 28.2.2020 and thus, the aforesaid judgment of the High Court of Punjab and Haryana was affirmed by the Supreme Court.

At the outset, learned counsel for the petitioner urged that a representation (Annexure P/7) was submitted on 26.12.2019 before the respondent No.2 claiming that due to technical difficulties, the petitioner was unable to file Trans-1 within permissible time and requested to allow the petitioner to file the same so as to enable him to claim transitional credit of eligible duties in respect of inputs held in stock on the appointed day in terms of Section 140(3) of the Act. It was urged that no heed was paid by the respondents. Accordingly, a prayer was made that respondents be directed to consider and decide the said representation.

Learned counsel appearing for the respondents did not object to the said prayer and stated that if the said representation is pending, the same will be decided by the respondents in accordance with law.

After perusing the writ petition and hearing learned counsel for the parties, without expressing any opinion on the merits of the controversy, we dispose of the writ petition with a direction to the respondent No.2, 3 and 4, as the case may be, to take a decision on the representation (Annexure P/7) filed by the petitioner within fifteen days by passing a speaking order after affording an opportunity of hearing to the petitioner or his representative through video conferencing, in accordance with law.

Accordingly, the writ petition stands **disposed of**.

(AJAY KUMAR MITTAL)	**(VIJAY KUMAR SHUKLA)**
Chief Justice	**Judge**

C/-

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