

THE HON'BLE SRI JUSTICE M.SEETHARAMA MJRTI

AND

THE HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition no.11457 of 2019

ORDER: (Per Hon'ble Sri Justice M. Seetharama Murti)

This writ petition, under Article 226 of the Constitution of India, is filed seeking verbatim the following relief:

‘...to issue an appropriate writ, order or direction in the nature of writ of mandamus directing the respondents to open the GSTN portal and enable petitioner to file the TRAN-I and transfer the credit to GST or alternatively, in the event that the respondents are not able to pen the GSTN portal, the respondents may be directed to accept the GST TRAN-I manually and allow the credit and permit the petitioner to utilize the said credit for payment of GST tax and pass such further orders in the interests of justice.’

2. We have heard the submissions of *Sri C.V.Narasimham*, learned counsel appearing for the writ petitioner; of learned Assistant Solicitor General of India, appearing for the respondents 1 to 6; and, of the learned Government Pleader for Commercial taxes appearing for the 7th respondent. We have perused the material record.

3. The case of the writ petitioner is this:

The petitioner is engaged in the business of manufacture of FIBC Bags and Plastic Crates. The petitioner was registered with Central Excise Department prior to introduction of GST. On introduction of Goods and Service Tax (GST), with effect from 01.07.2017, the petitioner

had obtained registration under the new law and is assigned to the State jurisdiction for the purpose of assessment. In terms of transitional provisions of CGST Act, 2017, the unutilized credit of duty/tax as on 30.06.2017 can be transferred to GST as per the conditions prescribed under various provisions of law. A form TRAN-I has been prescribed for availing the credit. The Central Government extended the time limit for filing the form TRAN-I till 27.12.2017, *vide* Order No.10/2017-GST, dated 15.11.2017. The petitioner is having closing balances of Cenvat Credit and VAT credit as on 30.06.2017. The petitioner tried to file the form TRAN-I through GST web portal, as prescribed under the Rules. Such attempts to file TRAN-I were made, on 25.12.2017, 26.12.2017 and 27.12.2017. However, the system did not allow the petitioner to file the said return by not connecting to the GSTN or by indicating that the 'due date is over', though the same was filed within the due date. The petitioner brought the said fact of inability in filing TRAN-I return to the notice of the 4th respondent, on 11.04.2018, through GST web portal. The 5th respondent, through e-mail, dated 12.04.2018, suggested to the petitioner to approach the jurisdictional GST officers by stating that after examining the issue, the matter will be forwarded to the GSTN and that on receipt of the grievance from the jurisdictional GST authorities, the GSTN authorities will resolve the issue. The petitioner addressed a letter, dated 12.04.2018, to the 1st respondent informing about the problem being faced by the petitioner and its inability to file the return and requested to resolve the issue and allow it to take credit amount in the GST credit ledgers. The petitioner also brought to the notice of the 1st respondent, the contents of the Circular no.39/13/2018-GST, dated 03.04.2018, *vide* their letter, dated 12.04.2018. However, no action has

been taken by the 1st respondent to resolve the issue. For no fault of the petitioner and technical issues on web portal, which could not be resolved, an amount of Rs.49,90,830/- is locked up causing financial strain to the petitioner. The petitioner addressed letter, dated 17.09.2018, to the 4th respondent informing about their grievance with a request to resolve the issue, as the grievance was not resolved by the jurisdictional GST authorities. Copy of the said letter, dated 17.09.2018, was also marked to the respondents 1 and 3; but, no response was received from them. The 4th respondent *vide* letter, dated 05.10.2018, advised the petitioner to file the IT grievance through jurisdictional Field Officer or nodal officer of GST. The petitioner again addressed a letter, dated 16.10.2018 to the 1st respondent requesting to resolve the issue. It was of no avail. The petitioner's personal visits to the office of the 1st & 2nd respondents were also of no avail. The Government of India issued a Notification no.48/2018-Central Tax, dated 10.09.2018, wherein it was specified that GST Council had extended the date for submitting the declaration electronically in Form GST TRAN-I upto 31.03.2019, on recommendation by the Council. Since the last date was fast approaching, the petitioner addressed a letter, dated 22.03.2019, to the 2nd respondent stating that no intimation was received from the technical team and requested to sort out the problem and pass an order allowing the petitioner to take the credit. The said letter, dated 22.03.2019, was acknowledged by the 2nd respondent, on 22.03.2019. In the background of the above facts & circumstances, and being aggrieved of the inaction on the part of the respondents, the petitioner filed the present writ petition.

4. Learned Government Pleader representing the office of the learned Advocate General appearing for the respondents would submit that the petitioner was lax and did not avail the extended time and that the petitioner is not entitled to the equitable relief.

5. In the light of the facts and submissions, the only question that falls for consideration is as to whether the petitioner's request can be considered and, if so, whether the respondents can be directed to either open the portal to enable the petitioner to now file FORM GST TRAN-1 electronically or whether the petitioner can be permitted to submit manually, the typed Form GST TRAN-1 for acceptance by the respondents.

6. Learned counsel for the petitioner placed reliance on a decision of the Madras High Court in **Tara Exports v. The Union of India & Others**¹ in support of his contentions and contended that the Madras High Court, in the cited decision, referred to the judgments of various High Courts and noted that various High Courts granted reliefs to the petitioners in various proceedings before the High Courts under similar circumstances. He also placed reliance on a decision of this Court, dated 13.08.2019, passed in W.P.no.3298 of 2019.

7. We have given earnest consideration to the facts and submissions.

8. Having regard to the facts and the legal position obtaining, we are of the view that the issue involved in this writ petition need not detain this Court for long. It is beneficial to refer to the decision of the High Court of Delhi in **UNINAV DEVELOPERS PVT. LTD., V. UNION OF INDIA &**

¹ 2018 (9) TMI 1474 – MADRAS HIGH COURT

OTHERS [2019-VIL-367-DEL] wherein the facts are as follows: - “On account of technical glitches, the petitioner therein was unable to claim CENVAT credit in Form TRAN-1; and, the petitioner could not file TRAN-1 electronically due to technical glitches of GST Portal; and, when the matter was placed before ITGRC, it concluded that the present case falls under the category of B2, that is, ‘Cases in which TRAN-1 filing attempted for the first time or revision was attempted but no error/no valid error reported.’ Thus, in the absence of evidence, the re-filing of the form by the petitioner was not allowed. The petitioner therein contended that the petitioner was unable to connect to the portal to submit the return in the first place and that the portal reflected the message ‘error occurred in submission’.” In the afore-stated decision, while dealing with an identical issue, the Delhi High Court referred to the precedents and held as follows: - ‘As observed by this Court in several orders i.e., in *Bhargava Motors v. Union of India* [2019 SCC on Line Del 8474 - 2019-VIL-218-DEL], *Kusum Enterprises Pvt.Ltd. v. Union of India* [WP(C) 7423/2019] and *Sanko Gosei Technology India Pvt. Ltd. V. Union of India & Ors* [WP(C) 7335/2019] - 2019-VIL-341-DEL], the entire GST system is still in a trial and error phase and it will be too much of a burden to place on the Assessee to expect them to comply with the requirement of the law where they are unable to even connect to the system on account of network failures or other failures.’ Eventually, the Delhi High Court granted the relief to the petitioner therein.

This Court having noted the above decision of the Delhi High Court granted relief to the petitioner in W.P.no.3298 of 2019.

9. In the light of the facts and the legal position obtaining, we are of the considered view that the petitioner's request merits consideration.

10. Accordingly, the Writ Petition is disposed of directing the respondents to either open the Portal to enable the petitioner to again file the Form GST TRAN-1 electronically or in the alternative accept the Form GST TRAN-1 presented manually, on or before 30.09.2019. It is needless to say that thereafter the petitioner's claim shall be processed in accordance with law.

No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand dismissed.

M. SEETHARAMA MURTI, J

J.UMA DEVI, J

29th August, 2019

Note:- Issue CC by 05.09.2019
(B/o)
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Dated: 29-08-2019

