

THE HONOURABLE SRI JUSTICE M. SEETHARAMA MURTI
AND
THE HONOURABLE MS JUSTICE J. UMA DEVI
WRIT PETITION No.3298 of 2019

ORDER: [Per Hon'ble Sri Justice M. SeetharamaMurti]

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

"...to issue an order, direction or a writ particularly one in the nature of Writ OF MANDAMUS declaring the proceedings of the 1strespondent vide C.No.V/30/18/2018-(GST Cell) dt.8-2-2019 in refusing to forward to the IT Grievance Redressal Committee the request of the petitioner company to consider carry forward of input tax credit as on 30-june 2017 a sum of Rs.4,01,14,416/- as illegal arbitrary and unconstitutional and consequently set aside the same by further directing the respondents to either to re-open and instate the facility of online submission of TRAN-1 to the petitioner or manually accept the hard copy of TRAN-1 of the petitioner and allow the duty credit to carry forward the legitimate input credit of Rs.4,01,14,416/- to GST period i.e. 30-06-2017 and to pass such other order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case."

We have heard the submissions of Sri S.S. Bhatt, learned counsel, appearing for the writ petitioner; of Sri Suresh Kumar Routhu, learned standing counsel for Customs& Central Excise, appearing for the 4th respondent; and of Sri B. Krishna Mohan, learned Assistant Solicitor General of India, appearing for the respondents 1 to 3 and 5. We have perused the material record.

From the pleadings of both sides and the submissions made by learned counsel for the petitioner and the learned standing counsel, the following facts are discernible:

According to the petitioner, the petitioner made an attempt for online submission of Form GST TRAN-1 related to carry forward Input Tax Credit [CFITC] of Rs.4,01,14,416/-; but, the petitioner could not file the TRAN-1 due to technical glitches. Therefore, the petitioner made a representation, dated 29.12.2018, to the

1strespondent stating therein that at the time of transition period for GST, the petitioner could not file TRAN-1 due to technical glitches and that the Accounts Officer, who tried to file the TRAN-1, suddenly left the Organisation, without notice, and that, therefore, they are unable to produce the evidence for technical glitches that they faced and requesting to consider claim related to CFITC, as on 30.06.2017. The petitioner further submitted another letter, dated 02.02.2019, along with a copy of ER-1 for the month of June, 2017. The petitioner filed WP.no.626 of 2019 before this Court to direct the respondents either to reopen and reinstate the facility of online submission of FORM GST TRAN-1 to them or manually accept the hard copy of the same and allow carry forward of ITC. By an order, dated 29.01.2019, passed in the said writ petition, the 2nd respondent was directed to verify the representation, dated 29.12.2018, and take appropriate action or pass appropriate orders in strict accordance with law, however, as expeditiously as possible. By letter, dated 08.02.2019, the petitioner was informed that the petitioner had not produced any evidence that the petitioner was prevented from filing the TRAN-1 in time and, therefore, the matter could not be taken up for forwarding to IT Grievance Redressed Committee [ITGRC] in view of the Boards Circular, dated 03.04.2018 in Circular No.39/13/2018-GST. Further, according to the respondents, as per recommendations of GST Counsel, the last date for filing of TRAN-1 was extended to 27.12.2017 *vide* orders, dated 15.11.2017, in Order No.09/2017-GST and 10/2017-GST and it was mentioned that the last date for submission of TRAN-1 and revised TRAN-1 was 27.12.2017 and that later a press note, dated 12.12.2017, was issued reiterating the fact that last date for filing TRAN-1 was 27.12.2017. It is also the submission of the respondents that the orders were made available in the official common portal and that after 23rd GST Counsel meeting, on 10.11.2017, the order of time limit was issued on 15.11.2017; and hence, the Accounts Officer of the petitioner should have immediately made alternative arrangements for filing TRAN-1 on or before 27.12.2017; but, the petitioner failed so to do and that in that view of the matter and as the petitioner has not produced any evidence regarding filing TRAN-1 on or before

27.12.2017, the department has not considered the representation,dated 29.12.2018, as a technical problem; and, the same is also intimated to the petitioner on 08.02.2019.

Thus, on one hand, the petitioner submits that it could not file Form GST TRAN - 1 electronically due to technical glitches and on the other the respondents contend that the petitioner was lax and did not avail the extended time and that there was no indication on record to show that the petitioner made an attempt to file Form GST TRAN-1 or bring the issue to thenotice of the department or GSTN before the last date of filing of Form GST TRAN-1, that is, 27.12.2017.

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 to permit the petitioner to submit manually, the typed Form GST TRAN-1 for acceptance by the respondents.

Learned counsel for the petitioner, placing reliance on the settled legal position, contended that GST system, at the relevant point of time, was in a trial and error phase and that not only the petitioner but several other dealers like the petitioner were unable to even connect to the system on account of network and other failures and that such situation is recognized by various High Courts and that, therefore, the petitioner's request merits consideration.

Per contra, learned standing counsel forcefully contended thatthe petitioner is not entitled to the relief in the light of the submissions of the department and because of the petitioner's failure to produce evidence like screen shot to show that the petitioner made an attempt to file Form GST TRAN-1 before the last date of filing of the same and the petitioner's further failure to bring the issue to thenotice of the department within a reasonable time.

We have given earnest consideration to the facts and submissions.

It is beneficial to refer to the decision of the High Court of Delhi in **UNINAV DEVELOPERS PVT. LTD., V. UNION OF INDIA & 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 onLine 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.

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

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 31.08.2019. 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

13.08.2019

Note: Issue CC by 14.08.2019.

B/o

Vjl