IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM

THE HONOURABLE **Dr. JUSTICE ANITA SUMANTH**

W.P.No.3328 of 2020

M/s.Checkpoint Apparel Labeling Solutions India Private Limited,
Represented by its Manager, V.R.Govindarajan,
AID, Industrial Complex,
Anna Salai, Maraimalai Nagar,
Chennai 603 209. .. Petitioner

Vs.

1.The Commissioner of GST & Central Excise,
Chennai Outer Commissionerate,
Newry Towers,
No.2054-I, 2nd Avenue, Anna Nagar,
Chennai – 600 040.

2.The Assistant Commissioner,
GST Seva Kendra
Chennai Outer Commissionerate,
Newry Towers,
No.2054-I, 2nd Avenue, Anna Nagar,
Chennai – 600 040.

3.The Superintendent of Central Tax (CGST),
Maraimalai Nagar Range,
Maraimalai Nagar Division,
Plot No.40, Ranga Colony Main Road,
Rajakilpakkam, Chennai – 600 063.

4.The Nodal Officer – GST Grievances,
O/o The Principal of Commissioner of GST & Central Excise,
Chennai North Commissionerate,
GST Bhawan, 26/1, Mahatma Gandhi Road,
Chennai – 600 034.

5.Goods and Service Tax Network,
East Wing, 4th Floor, World Mark – 1,
Indira Gandhi International Airport,
New Delhi – 110 037. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, call for the records pertaining to the impugned communication dated 1.1.2020 in C.No.IV/26/88/2019-GSTSK-TRAN-1 and quash the same and further direct the Respondents to permit the petitioner to file Form TRAN-1 and TRAN-2 to enable the petitioner to transition credit in respect of inputs held in stock and in respect of the credit unavailed on the capital goods in terms of Section 140(3) of the Central Goods and Service Tax Act, 2017.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.K.S.Ramasamy
Junior Panel Counsel

ORDER

The petitioner was registered under the erstwhile Service Tax/Value Added Tax (in short 'VAT')/Central Sales Tax (CST) regimes and had certain unutilised amounts to its credit. With the coming into force of the Goods and Service Tax Act, the credits as aforesaid were liable to be transitioned and carried forward for which purpose a Form in TRAN-1 and 2, was to be uploaded in the portal of the Department. The last date stipulated as per Rule 117 of the Central Goods and Service Tax Rules, 2017 (CGST Rules) was 27.12.2017. There were, admittedly manifold glitches in accessing the website and uploading the Form. In fact, Courts all over the country have been dealing with matters where assessees have vented grievances and difficulties in uploading the Forms and relief has been granted in several matters directing the Department to permit access and allow the petitioner therein to upload the Declaration Forms.

2.The petitioner has been filing regular monthly returns, but has been unable to seek the benefit of carry forward credit, since TRAN-1 form was not uploaded in time. On 03.04.2018, the Central Board of Indirect Taxes and Customs issued a Circular bearing No.39/13/2018-GST in F.No.267/7/2018-CX.8 dealing with the subject of setting up of an IT Grievance Redressal Mechanism to address the grievances of assessees facing technical glitches on GST Portal. It is thus clear that the officials of the Department of Goods and Service Tax were well aware of the existence of such glitches.

3.Notwithstanding this, at paragraph-5, the Board places the onus upon the assessee to establish a demonstrable glitch in the portal. Such requirement does not figure in the Act prior to 03.04.2018 and thus an assessee has not been put to notice that he would have to collect evidence of difficulty/technical glitch in uploading forms.

4.Rule 117 was amended by insertion of sub-rule (1A) on 10.09.2018, extending the due date for uploading of TRAN Declaration Form to 31.03.2019. This date has since been extended to 31.03.2020 by Notification issued by the Central Board of Excise Customs bearing No.02/2020. Rule 117(1A) reads as follows:

> *'[(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond 31st March, 2019, in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.]'*

5.The requirement for an assessee to establish technical difficulty as expressed in Circular dated 03.04.2018, is reiterated in the provision. I am however, unable to understand as to how the assessee would have anticipated this requirement in order that it collects proof by way of screen shots and otherwise establish the factum of technical glitches.

6.Though Goods and Service Tax has been introduced to streamline multiple revenue enactments, the mass of litigation that Rule 117 has generated, has defeated the very object and purpose of the enactment. Transition, by itself, does not vest any right in the assessee. It is only utilisation of credit that does, and such utilisation is subject to verification and assessment by an Assessing Officer. It is thus vital that the distinction between transition of a credit and utilisation of such credit after verification by an Officer is taken note of in the proper perspective.

7. In fine, I allow this Writ Petition, drawing support from the following three decisions:-

i) *Adfert Technologies Pvt. Ltd. V. Union of India* (CWP No.30949 of 2018 (O&M) dated 04.11.2019 of the Punjab and Haryana High Court

ii) *Avante Tablewares Throughs V. The Nodal Officer* (C/SCA/5758/2019 dated 06.09.2019 of the Gujarat High Court and

iii) *Siddharth Enterprises V. Nodal Officer* (2019 (29) GSTL 664 of the Gujarat High Court

8. The exchange of communications between 28.12.2017 and 01.01.2020 reveal that the petitioner has been diligent in making efforts to open the portal and upload the forms and the respondents are directed to do the needful forthwith to enable the petitioner to upload the requisite forms. No costs.

14.02.2020

vs
Index: Yes
Speaking Order

To

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