

In the High Court of Judicature at Madras

Dated : 18.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

W.P.Nos.7218 to 7225 of 2018

M/s.Pothys, rep.by its Managing
Partner Mr.S.Ramesh, Chennai-17. ...Petitioner in
WP.No.7218/2018

M/s.Pothys, rep.by its Managing
Partner Mr.S.Ramesh, Tirunelveli ...Petitioner in
WP.No.7219/2018

M/s.Pothys Textiles, rep.by its
Managing Partner Mr.S.Ramesh
Tirunelveli ...Petitioner in
WP.No.7220/2018

M/s.Pothys Private Limited,
rep.by its Director Mr.S.Ramesh,
Chennai-17 ...Petitioner in
WP.No.7221/2018

M/s.Pothys Fabrics, rep.by its
Managing Director Mr.S.Ramesh,
Tirunelveli ...Petitioner in
WP.No.7222/2018

M/s.Pothys Garments, rep.by its
Managing Partner Mr.S.Ramesh,
Tirunelveli ...Petitioner in
WP.No.7223/2018

M/s.Pothys Matchings, rep.by its
Managing Partner Mr.S.Ramesh,
Tirunelveli ...Petitioner in
WP.No.7224/2018

M/s.Pothys Private Limited, rep.
By its Director Mr.S.Ramesh,
Puducherry ...Petitioner in
WP.No.7225/2018

Vs

1.The Principal Chief Commissioner,
Goods and Services Tax Act (previously
Central Excise & Customs),
Nungambakkam, Chennai-34.

2.Government of Tamil Nadu, Rep. by
its Secretary, State Tax Department,
Fort St. George, Chennai-9.

3.Union of India, Rep. by its
Secretary, Ministry of Finance,
Department of Revenue, North
Block, New Delhi-110001.

4.The Chairman, GSTIN, East Wing,
World Mark -1, 4th Floor, Tower B,
Aerocity, Indira Gandhi International
Airport New Delhi-110037.

...Respondents in
all WPs

PETITIONS under Article 226 of The Constitution of India
praying for the issuance of Writs of Mandamus to direct the 1st
Respondent to enable the respective petitioner to file GST TRAN
1 electronically or manually and treat it as filed in accordance
with law.

For Petitioners
in each : Mr.A.Ravichandran
For Respondent-1 : Mr.V.Sundareswaran, SPC
For Respondent-2 : Mrs.G.Dhana Madhri, GA
For Respondents 3 & 4
in all : Mr.T.L.Thirumalaaisamy, CGSC

COMMON ORDER

Heard both.

2. The sum and substance of the prayer of the petitioners is
that they are unable to upload Form GST TRAN-1 to take credit of
the input tax/ service tax/central excise duty availed by them at
the time of migration within the time stipulated.

3. The petitioners would state that they were unable to
upload Form GST TRAN-1 within the time stipulated on account of
some error. Therefore, the petitioners seek for appropriate
direction in this regard.

4. Similar prayers were made before the High Courts of
Chhattisgarh, Delhi and Kerala. The High Court of Chhattisgarh,
in W.P(T) No.68 of 2018 by order dated 14.5.2018, issued
appropriate directions. The operative portion of the said order

reads as follows:

"7. After going through the aforesaid circular and the scheme of the circular, I am convinced that complete procedure has been prescribed for redressal of grievance which the petitioner has raised in this writ petition, particularly of non-uploading of FORM TRAN-I due to technical glitches. Apart from this State Government - Commissioner, Central Excise/GST has issued order dated 5.4.2018 in which Nodal Officers have already been appointed by the State Government. In view of the above, the petitioner is directed to approach the Nodal Officer of Dhamtari i.e., Assistant Commissioner, State GST, Raipur Circle - 7 within four days from today by filing representation along with all necessary documents for redressal of his grievance and in turn, the said authority would consider and dispose of the same following the procedure laid down in para 8 of the circular dated 3.4.2018 and would take decision accordingly keeping in view that this writ petition remained pending since 26.3.2018.

8. With the aforesaid direction, the writ petition stand finally disposed of."

5. So far as the High Court of Delhi is concerned, the Delhi High Court, in W.P(C) No.1300 of 2018 etc. batch by order dated 09.4.2018, directed the petitioners therein to approach the concerned Nodal Officer with brief representations outlining their grievances and the Nodal Officer or the Redressal Committee was directed to appropriately deal with representations in accordance with the circular dated 03.4.2018.

6. So far as the Kerala High Court is concerned, in W.P.No.17348 of 2018 by order dated 14.6.2018, the following direction has been issued:

"Having regard to the facts and circumstances of this case as also the orders passed in similar matters, I deem it appropriate to dispose of the writ petition permitting the petitioner to prefer an application before the additional sixth respondent, the Nodal Officer appointed to resolve issues in the nature of one raised by the petitioner. Ordered accordingly. Needless to say that if the petitioner prefers an application within two weeks from

the date of receipt of a copy of this judgment, same shall be considered and appropriate decision shall be taken by the additional sixth respondent within a week thereafter. Needless also to say that if it is found that the petitioner could not upload FORM GST TRAN-1 for reasons not attributable to him, appropriate action shall be taken to enable him to take credit of the input tax available to him at the time of migration."

7. The learned counsel appearing for the petitioners would submit that identical directions may be issued in this batch of cases as well.

8. It was brought to the notice of the Central Board of Indirect Taxes (CBIC) and Customs about the difficulties faced by a section of tax payers owing to technical glitches on the GST and representations were given by the petitioners. Therefore, the CBIC is setting up a Grievance Redressal Mechanism vide Circular No.39/13/2018-GST dated 03.4.2018. Paragraph 8 of the said circular would be relevant for the purpose of the cases on hand, which reads as under :

"8. Resolution of stuck TRAN-1s and filing of GSTR-3B

8.1 A large number of taxpayers could not complete the process of TRAN-1 filing either at the stage of original or revised filing as they could not digitally authenticate the TRAN-1s due to IT related glitches. As a result, a large number of such TRAN-1s are stuck in the system. GSTN shall identify such taxpayers who could not file TRAN-1 on the basis of electronic audit trail. It has been decided that all such taxpayers, who tried but were not able to complete TRAN-1 procedure (original or revised) of filing them on or before 27.12.2017 due to IT glitch, shall be provided the facility to complete TRAN-1 filing. It is clarified that the last date for filing of TRAN-1 is not being extended in general and only these identified taxpayers shall be allowed to complete the process of filing TRAN-1.

8.2. The Taxpayers shall not be allowed to amend the amount of credit in TRAN-1 during this process vis-a-vis the amount of credit which was recorded by the taxpayer in the TRAN-1, which could not be filed. If

needed, GSTN May request field formations for Centre and State to collect additional document/data etc., or verify the same to identify taxpayers who should be allowed this procedure.

8.3. GSTN shall communicate directly with the taxpayers in this regard and submit a final report to GIC about the number of TRAN-1s filed and submitted through this process.

8.4. The taxpayers shall complete the process of filing of TRAN 1 stuck due to IT glitches, as discussed above, by 30th April 2018 and the process of completing filing of GSTR 3B which could not be filed for such TRAN 1 shall be completed by 31st May 2018."

9. Further, paragraph 5.1 of the said circular would state that GSTN, Central and State Government would appoint Nodal Officers in requisite number to address the problem a taxpayer faces due to glitches, if any, in the common portal. This would be publicized adequately.

10. An argument was advanced by the learned counsel for the assesseees that paragraph 5 of the said circular dated 03.4.2018 is confined to non-TRAN-1 issues. However, this Court finds that there is no such specific distinction brought about in paragraph 5 of the said circular. Therefore, it can be safely held that the procedure of appointment of Nodal Officers and identification of issues are to be done in the manner provided in paragraph 5 of the said circular. Unless the Nodal Officers are appointed, the Jurisdictional officer of the Assessee, namely Assessing Officer would not be in a position to forward the representations/applications filed by the assesseees pointing out the glitches they are facing while availing the credit during the transition process.

11. The learned Government Advocate submits that the Principal Secretary and Commissioner of Commercial Taxes, Government of Tamil Nadu vide, proceedings dated 18.5.2018, nominated Mr.S.Ramasamy, Joint Commissioner (CS) as the State Level Nodal Officer to address the problems faced by the tax payers due to IT glitches, if any, in the GST portal. The Senior Standing Council appearing for GSTN and Commissioner of GST and Center Excise (Outer) has also informed that already a Nodal officer had been appointed by GSTN and Commissioner of GST and Central excise (Outer).

12.Thus, writ petitions stand disposed of with the following directions:

(i) The respective Commissioner of GST and Central excise are directed to appoint Nodal Officer/Officers for the State of Tamil Nadu, if not already appointed, within a period of 2 weeks from the date of receipt of a copy of this order and

(ii) The petitioners/assesseees are directed to submit their applications in accordance with paragraph 8 of the said circular dated 03.4.2018 within a period of two weeks from the date of receipt of a copy of this order to their respective Assessing Officers/Jurisdictional Officers/GST Officers. The Assessing Officers are directed to forward the applications to the Nodal Officers within a period of one week. The Nodal Officer nominated will, in consultation with the GSTN, shall take note of the grievances expressed by the petitioners/assesseees and forward the same to the Grievance Committee, who, in turn, would take an appropriate decision in the matter within a period of three weeks from the date, on which, the applications are received in proper form.

No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Commissioner,
GST and Central Excise,
6/7, ATD Street,
Race Course Road,
Coimbatore-641018.

2.The Secretary to Government of Tamil Nadu,
State Tax Department,
Fort St. George, Chennai-9.

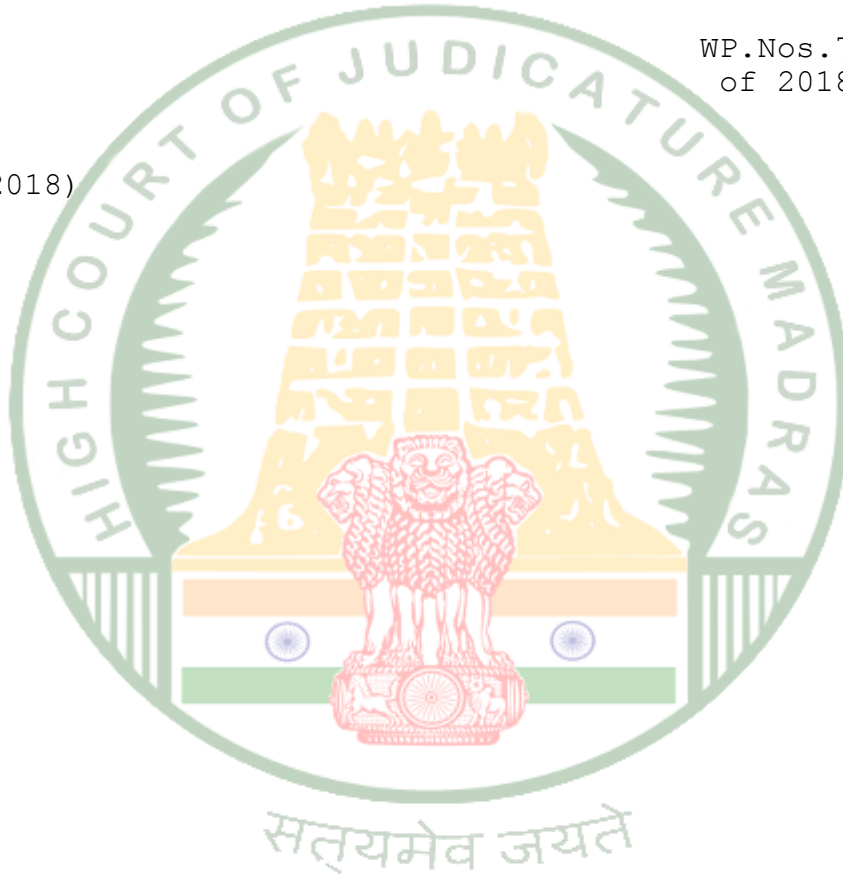
3.The Secretary to Union of India,
Ministry of Finance, Department of
Revenue, North Block, New Delhi-110001.

4.The Chairman, GSTIN,
East Wing, World Mark -1,
4th Floor, Tower B,
Aerocity, Indira Gandhi International Airport
New Delhi-110037.

+8cc to Mr.A.RAVICHANDRAN, Advocate, S.R.No.48552 TO 48459
+1cc to the SLP. Government Pleader, S.R.No. 47137
+1cc to Mr.T.L.THIRUMALAISAMY, Advocate, S.R.No.47452
+3cc to Mr.V.SUNDARESWARAN, Advocate, S.R.No.47374

WP.Nos.7218 to 7225
of 2018

NRL (CO)
TR(30/07/2018)



WEB COPY