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W.P. No.7131 (W) of 2019

**M/s. Paharpur Cooling Towers Ltd.
Versus
Union of India & Ors.**

Mr. Ravi Raghavan,
Mr. Kartikey Kulshrestha ... For petitioner.

Mr. K. K. Maiti For respondent no.3.

Mr. Vipul Kundalia,
Mr. Tapan Bhanja ... For Union of India.

Challenge in this writ petition is two fold.
First against letter dated 26th March, 2019 issued by
Additional Commissioner of State Tax. Secondly, vires of
rule 117 in Central Goods and Service Tax Rules, 2017
and rule 117 in West Bengal GST Rules, 2017.

Mr. Raghavan, learned advocate appears on
behalf of petitioner and submits, in transition to GST
regime there was clerical error made by his client
assessee, resulting in claim of short credit on transition.
Since it is by result of clerical error and not technical
glitch, the credit is being denied. There is no dispute
regarding legality of the credit claimed by his client.

Several High Courts have taken similar views in directing revenue to consider similar situations resulting from error. He relies on Division Bench **judgment dated 6th September, 2019** of High Court of Gujarat in, inter alia, **R/Special Civil Application 5758 of 2019 (M/s Siddharth Enterprises Vs. The Nodal Officer)** and **judgment dated 16th September, 2019** of High Court of Delhi in **W.P.(C) 3736/2018 (Krish Automotors Private Limited Vs. Union of India & Ors.)**. Lastly on **Adfert Technologies Pvt. Ltd. Versus Union of India and ors.** dealt with by a Division Bench of High Court of Punjab and Haryana on **judgment dated 4th November, 2019**. Mr. Kundalia, learned advocate appears on behalf of Union of India and submits, eligibility to cause transition is dependent on having filed service tax return (ST-3). Petitioner did not file such return. Hence, there should not be interference on petitioner's challenge to letter dated 26th March, 2019, issued by Additional Commissioner of State Tax.

Mr. Raghavan submits in reply, ST-3 return was filed online but revised return could not be so filed and therefore filed manually. The revision by TRAN – 1 needs to be done. He reiterates, several High Courts have

expressed the view that it can be done. By notification dated 9th October, 2019 there was amendment to rule 117 of CGST Rules, 2017, to extend the deadline for filing of GST TRAN – 1 form till 31st December, 2019. State goes unrepresented in spite of having been represented earlier.

In **Adfert Technologies Pvt. Ltd.** (supra), the Division Bench quoted extensively from judgment by a Division Bench of Gujarat High Court in **Siddhartha Enterprises** (supra). Paragraph 42 of the Gujarat Division Bench judgment, extracted therein, is reproduced below:-

“42. Article 300A provides that no person shall be deprived of property saved by authority of law. While right to the property is no longer a fundamental right but it is still a constitutional right. CENVAT credit earned under the erstwhile Central Excise Law is the property of the writ-applicants and it cannot be appropriated for merely failing to file a declaration in the absence of Law in this respect. It could have been appropriated by the government by providing for the same in the CGST Act

but it cannot be taken away by virtue of merely framing Rules in this regard.”

Section 140 in CGST Act, 2017 requires a condition precedent to be fulfilled for being entitled to take amount of CENVAT credit of eligible duties carried forward as mentioned in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such a manner as may be prescribed. Inserted by notification 3rd proviso in sub-rule (2) of rule 7, Service Tax Rules, 1994 required return for the period from 1st April, 2017 to 30th June, 2017 to be submitted by 15th August, 2017. Also inserted by notification rule 7B carries proviso that revised return for period from 1st April, 2017 to 30th June, 2017 shall be submitted within a period of 45 days from the date of submission of the return under rule 7.

Facts are that petitioner filed ST-3 return for the period on 15th August, 2017. Revised return was filed manually on 15th September, 2017. Requirements under section 140 and said rules stands fulfilled in case of petitioner.

In view of notification dated 9th October, 2019

on extension of time to file GST TRAN – 1 form till 31st December, 2019, vires challenge is not pressed by Mr. Raghavan. On aforesaid facts, going by view taken by several High Courts and particularly those mentioned above, petitioner stands entitled to file revised GST TRAN – 1 form up to 31st December, 2019. Since Revenue has not acted upon the law whereby CENVAT credit can be denied but is otherwise resisting claim for availing the credit on omission by error on uploaded GST TRAN -1 form, the resistance cannot be sustained.

With above observations, this writ petition is disposed of.

(Arindam Sinha, J.)