

Court No. - 7**Case :-** WRIT TAX No. - 1120 of 2019**Petitioner :-** M/S Ingersoll-Rand Technologies And Services Private Limited**Respondent :-** Union Of India And 3 Others**Counsel for Petitioner :-** Atul Gupta, Abhishek Kumar Tripathi**Counsel for Respondent :-** A.S.G.I., C.S.C., Om Prakash Srivastava**Hon'ble Biswanath Somadder, J.****Hon'ble Ajay Bhanot, J.****(Per: Hon'ble Biswanath Somadder, J.)**

The writ petitioner - company has approached this Court essentially seeking its intervention to allow the writ petitioner to file a revised declaration in FORM G.S.T. T.R.A.N-1 or manually accept the same to enable the writ petitioner - company to avail the credit pertaining to SAD (Special Additional Duty) amounting to Rs. 22,51,380.21/-; which, according to the writ petitioner was not claimed by it, inadvertently.

The question as to whether we can issue a writ in the nature of mandamus as prayed for can be answered if we look into the applicable provisions of law in the facts of the instant case. However, before we do so, certain facts relevant to the issue before us are required to be taken note of.

The writ petitioner intends to avail the credit pertaining to SAD (Special Additional Duty) amounting to Rs. 22,51,380.21/- in respect of goods held in stock as on 30th June, 2017. It is the admitted position that the writ petitioner has already submitted FORM G.S.T. T.R.A.N-1 on 10th October, 2017, to carry forward the credits available to it as on 30th June, 2017. By a letter

dated 28th March, 2019, addressed to the Hon'ble Chairman, Goods and Services Tax Council, Government of India, the writ petitioner requested the Council to consider its case and to allow the writ petitioner to re-submit FORM G.S.T. T.R.A.N-1 within the extended period in order to enable the writ petitioner - company to carry forward the credit of SAD amount of Rs. 22,51,380.21/- in relation to stock of goods lying as on 30th June, 2017, under the transitional provisions of section 140(3) of the Uttar Pradesh Goods & Services Tax Rules, 2017. Relevant portion of the letter dated 28th March, 2019, is reproduced hereinbelow;-

"In view of the above, we request the council to consider our case and allow us the extended period to re-submit Form GST TRAN-1 in order to enable us to carry forward the credit of SAD amounting to Rs.22,51,380.21/- in relation to stock of goods lying as on 30.06.2017 under the transitional provisions of Section 140(3) of CGST Act. We would again like to submit that as we were entitled to carry forward the credit of the said amount of SAD under the transitional provisions, such substantive benefit should not be denied to us due to a procedural lapse."

However, in spite of the above letter being on record, the writ petitioner has now come forward before this Court claiming that it is the Commissioner, Commercial Tax, U.P. who has the power to extend the time period for the purpose of submitting a revised declaration in FORM G.S.T. T.R.A.N-1.

The first of the relevant rules which we need to take notice of in the facts of the instant case is Rule 120-A of the Uttar Pradesh Goods & Services Tax Rules, 2017, which reads as follows;-

"[120-A. [Revision of declaration in FORM G.S.T. T.R.A.N.-1] - Every registered person who has submitted a declaration electronically in FORM G.S.T. T.R.A.N.-1

*within the period specified in Rule 117, Rule, 118, Rule 119 or Rule 120 may revise such declaration once and submit the revised declaration in **FORM G.S.T. T.R.A.N.-1** electronically on the Common Portal within the period specified in the said rules or such further period as may be extended by the Commissioner in this behalf.]"*

The other rule which we need to take notice of is Rule 117 of the Uttar Pradesh Goods & Services Tax Rules, 2017, which reads as follows;

"117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day.-(1) Every registered person entitled to take credit of input tax under Section 140 shall, within ninety days of the appointed day, submit a declaration electronically in **FORM G.S.T. T.R.A.N.-1**, duly signed, on the Common Portal specifying therein, separately, the amount of input tax credit [x x x] to which he is entitled under the provisions of the said section:

Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days:

Provided that in the case of a claim under sub-section (1) of Section 140, the application shall specify separately-

(i) the value of claims under Section 3, sub-section (3) of Section 5, Sections 6 and 6A and sub-section (8) of Section 8 of the Central Sales Tax Act, 1956 made by the applicant; and

(ii) the serial number and value of declarations in Forms C or F and certificates in Forms E or H or Form I specified in Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 submitted by the applicant in support of the claims referred to in sub-clause (i);

[(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.]

(2) Every declaration under sub-rule (1) shall,-

(a) in the case of a claim under sub-section (2) of Section 140, specify separately the following particulars in respect of every item of capital goods as on the appointed day-

(i) the amount of tax or duty availed or utilised by way of input tax credit under each of the existing laws till the appointed day; and

(ii) the amount of tax or duty yet to be availed or utilised by way of input tax credit under each of the existing laws till the appointed day;

(b) in the case of a claim under sub-section (3) or Clause (b) of sub-section (4) or sub-section (6) or sub-section (8) of Section 140, specify separately the details of stock held on the

appointed day;

(c) in the case of a claim under sub-section (5) of Section 140, furnish the following details, namely:

(i) the name of the supplier, serial number and date of issue of the invoice by the supplier or any document on the basis of which credit of input tax was admissible under the existing law;

(ii) the description and value of the goods or services;

(iii) the quantity in case of goods and the unit or unit quantity code thereof;

(iv) the amount of eligible taxes and duties or, as the case may be, the value added tax [or entry tax] charged by the supplier in respect of the goods or services; and

(v) the date on which the receipt of goods or services is entered in the books of account of the recipient.

(3) The amount of credit specified in the application in FORM G.S.T. T.R.A.N.-1 shall be credited to the electronic credit ledger of the applicant maintained in FORM G.S.T. P.M.T.-2 on the Common Portal.

(4)(a)(i) A registered person, holding stock of goods which have suffered tax at the first point of their sale in the State and the subsequent sales of which are not subject to tax in the State availing credit in accordance with the proviso to sub-section (3) of Section 140 shall be allowed to avail input tax credit on goods held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of value added tax.

(ii) The credit referred to in sub-clause (i) shall be allowed at the rate of sixty per cent. on such goods which attract State tax at the rate of nine per cent, or more and forty per cent, for other goods of the State tax applicable on supply of such goods after the appointed date and shall be credited after the State tax payable on such supply has been paid:

Provided that where integrated tax is paid on such goods, the amount of credit shall be allowed at the rate of thirty per cent and twenty per cent, respectively of the said tax;

(iii) The scheme shall be available for six tax periods from the appointed date.

(b) The credit of State tax shall be availed subject to satisfying the following conditions, namely:

(i) such goods were not wholly exempt from tax under the (Name of the State) Value Added Tax Act;

(ii) the document for procurement of such goods is available with the registered person;

[(iii) the registered person availing of this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in FORM G.S.T. T.R.A.N.-2 by 31st March, 2018, or within such period as extended by the Commissioner, on the recommendations of the Council, for each of the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period:]

[Provided that the registered persons filing the declaration in FORM GST TRAN-1 in accordance with sub-rule (1A), may submit the statement in FORM GST TRAN-2 by 30th April, 2019.]

(iv) the amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in FORM G.S.T. P.M.T.-2 on the Common Portal; and

(v) the stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person."

A conjoint reading of the above two rules clearly reveals that every registered person who has submitted a declaration electronically in FORM G.S.T. T.R.A.N-1 within the period specified in Rule 117 or Rule 118 or Rule 119 or Rule 120 is allowed to revise such declaration once and submit the revised declaration in FORM G.S.T. T.R.A.N-1 electronically on the common portal, **"within the period specified in the said rules or such further period as may be extended by the Commissioner in this behalf."** This further period - as may be extended by the Commissioner - which is provided under Rule 120-A, therefore, cannot go beyond the time-frame provided under Rule 117 of the Uttar Pradesh Goods & Services Tax Rules, 2017. The period of extension has been statutorily circumscribed at 90 days and that too is possible only on the recommendation of the Council.

If we are to assume that the Commissioner while exercising his powers under Rule 120-A of the Uttar Pradesh Goods & Services Tax Rules, 2017 can extend the time period for the purpose of filing of a revised declaration by a registered person in FORM G.S.T. T.R.A.N-1 for an unlimited or an indefinite period, it would simply mean that any registered person can avail

the benefit of filing a revised declaration in FORM G.S.T. T.R.A.N-1 for an unlimited or indefinite period of time after submitting a declaration electronically in FORM G.S.T. T.R.A.N-1 under Rule 117 of the Uttar Pradesh Goods & Services Tax Rules, 2017. That surely could not have been the purpose and intention of the legislature. Rather, the legislature in its wisdom has noticed Rule 117, Rule 118, Rule 119 and Rule 120, while framing Rule 120-A of the Uttar Pradesh Goods & Services Tax Rules, 2017. The first proviso attached to Rule 117 of the Uttar Pradesh Goods & Services Tax Rules, 2017, reads as follows;-

“Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days.”

In such circumstances as stated above, a writ in the nature of mandamus, as prayed for, cannot be granted by this Court. However, it is open to the Council to take a decision in the matter in the light of the writ petitioner's letter dated 28th March, 2019.

The writ petition is accordingly, disposed of.

Order Date :- 21.11.2019
Pravin/Neeraj

(Biswanath Somadder,J.)

(Ajay Bhanot,J.)