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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 762/2019**

CHOGORI INDIA RETAIL LIMITED Petitioner

Through: Ms.Sanchayeet Das, Mr. Satyam
Mishra, Ms.Ayushi Dhingra and
Mr.Vinay Jaiswal, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr.Anurag Ahluwalia, CGSC,
Mr.Abhigyan Siddhant, Advocates for
UOI.
Mr.Amit Bansal, SSSc with Mr.Aman
Remania, Advocate for R-2.
Mr.Anuj Aggarwal, ASC/GNCTD.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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03.09.2019

C.M.No.38950/2019 (for correction of order dated 09.08.2019)

1. For the reasons stated therein, the application is allowed.

2. The corrected order dated 9th August, 2019 shall read as under:

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CHOGORI INDIA RETAIL LIMITED Petitioner

Through Ms. Sanchayeeta Das, Mr.
Vinay Jaiswal, Mr. Satyam
Mishra & Ms.Ayushi Dhingra,
Advocates.

versus

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UNION OF INDIA & ORS.

Through

..... Respondents

Mr. Anurag Ahluwalia, CGSC
with Mr. Kartikeya Rastogi,
Advocates for Respondent
No.1/UIO

Mr. Amit Bansal with Mr.
Aman Rewaria, Advocates for
Respondent No.2

Mr. Anuj Aggarwal, Additional
Standing counsel for
Respondents No.3 & 4/GNCTD

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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09.08.2019

1. The Petitioner has approached this Court for a direction to the Respondents to allow the Petitioner to file form GST TRAN-1 online or accept the form manually to enable the Petitioner to avail of the transitional credit (TC) of Rs.1,74,71,030.67.

2. The Petitioner states that he is engaged in retail of outdoor adventure and sportswear brand in the name and style of Columbia Sportswear Company. After coming into force, the GST regime by enactment of the Central Goods and Services Tax Act, 2017 (CGST Act) with effect from 1st July, 2017, the Petitioner was granted registration certificate and a GSTIN Registration No. 07AADCC2405P1ZN.

3. The Petitioner states that as on 30th June, 2017 it had a transitional credit of Rs.1,74,71,030.67 lying as credit balance in its credit account. Under Section 140(1) of the CGST Act, 2017 the Petitioner is allowed to take into its electronic tax ledger, the aforementioned transitional credit by carrying it forward in the return relating to the period ending with the day immediately

preceding the appointed day. In other words, the transitional credit lying with the Petitioner as on 30th June, 2017 could be claimed in the return to be filed under the CGST Act and can be used by it to discharge its liability thereunder as prescribed in Chapter XIV of Central Goods and Services Tax Rules, 2017. This credit of input tax had to be availed within 90 days from the appointed day by submitting a declaration electronically in Form GST TRAN-1 duly signed on the common Portal specifying therein separately the amount of Input Tax Credit (ITC) of eligible duties and taxes.

4. The due date for submitting the GST TRAN-1 was extended on account of technical glitches and the due date for furnishing the form was extended to 27th December, 2017. The Petitioner avers that it tried to file the TRAN-1 Form prior to the above deadline numerous times but the system displayed an error and it was unable to upload the form. The Petitioner states that apart from sending E-mail they visited the GST helpdesk several times to resolve the technical issues to enable it to claim the transitional credit. It is stated by the Petitioner that due to its inability to file TRAN-1 Form, the Petitioner faced difficulty in filing its monthly returns and that till the filing of this petition, the Petitioners had paid an amount of Rs.33,45,790/- solely because they were not allowed the transactional credit by the Respondents.

5. It is mentioned that an IT Grievance Redressal Committee (ITGRC) was set up by the Central Board of Indirect Taxes and Customs (CBIC) by Circular No. 39/13/2018 dated 3rd April, 2018 to address of grievances of taxpayers arising from the technical glitches on the GST Portal. The Petitioner sent an application of error in uploading TRAN-1 Form to the ITGRC but did not receive any reply. The Petitioner states that despite the Department of Revenue published a notification extending the time limit for submitting the declaration in Form GST TRAN-1 till 31st January, 2019, no link for uploading the TRAN-1 Form had been provided on the Portal. It is in those circumstances that the present petition was filed seeking the

aforementioned relief.

6. At the hearing of the present petition on 25th February, 2019 this Court passed the following order:

“1. The petitioner's grievance is that its grievances have not been addressed; it submits that its GST TRAN-I, has not been accepted online and instead seeks a direction that it may be permitted to manually file it and upload it online, to enable it to claim transitional credit to the tune of Rs.1.74 crores.

2. The petitioner relies upon the representation given to the GST Council/respondent No.2 & the Nodal Officer/respondent No.3 on 17.04.2018 [tracking number for which was generated] as has been described in page 9 of the paper book.

3. The respondents, especially the respondent No.2 is directed to consider and indicate its appropriate response; in case the problem is redressed or resolved within time, it shall be directly intimated to the petitioner.

4. List on 18th March, 2019.”

7. In response to the notice issued in the petition, a short affidavit has been filed by the Principal Commissioner, CGST, Delhi (East). *Inter-alia* it is stated that during the 2nd meeting of the ITGRC held on 21st August, 2018 the case of the Petitioner was considered. It was concluded that there was no evidence of error in submitting and filing of TRAN-1 Form prior to the due date. Therefore, the case of the Petitioner fell in the Table-II Category under Serial. No. D. In the case of the Petitioner and 127 similar cases it was decided by the ITGRC not to allow re-filing of the TRAN-1 Form.

8. Learned counsel for the Petitioner states that they have screenshots of the web Portal at the relevant date and time to demonstrate that the system was in fact not permitting the online filing of the TRAN-1 Form when the Petitioner attempted to do so prior to 27th December, 2017.

9. This Court would not like to get into the issue whether in fact the Petitioner faced difficulty. The TC available in the account of the Petitioner is a substantial sum. It is not denied by the Respondent that the Petitioner is entitled to carry forward such TC and use it for payment of the taxes under the CGST Act. It is also not in dispute that there have been numerous glitches on the GST Portal in making it difficult for uploading of the TRAN-1 Forms. This Court has itself issued orders in numerous cases permitting Petitioners to be afforded one more opportunity to either file the TRAN-1 Form electronically or manually. A reference may be made in orders in ***Bhargava Motors v. Union of India 2019 SCC OnLine Del 8474, (2019) 260 DLT 507[DB]*** and ***Blue Bird Pure Pvt. Ltd. v. Union of India 2019 SCC OnLine Del 9250***. All of these orders have acknowledged, as has the Madras High Court in ***Tara Exports v. Union of India 2018 SCC online Madras 3387*** that the GST system is still in the trial and error phase.

10. Accordingly a direction is issued to the Respondent to either re-open the Portal to enable the Petitioner to file its TRAN-1 Form electronically failing which to permit it to file manually on or before 13th September, 2019. Thereafter, the Petitioner's claims will be processed expeditiously in accordance with law.

11. The petition is disposed of in the above terms.”

3. Order be issued *dasti* under signature of the Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 03, 2019/mr