

\$~67

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

+ **W.P.(C) 8971/2019**

SIKKA MOTORS PVT. LTD. Petitioner

Through: Mr. Ruchir Bhatia, Advocates

versus

COMMISSIONER, CENTRAL GOODS AND SERVICE TAX &
ORS. Respondents

Through: Mr. Harpreet Singh, Senior Standing
Counsel with Ms. Shivani Mathur for
R-1&2

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **20.08.2019**

CM APPL. 37004/2019 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 8971/2019 & CM APPL. 37005/2019(direction)

2. Notice. Respective counsel for the Respondents as noted above accepts notice.

3. This is one other case, where on account of technical glitches, a registered dealer is unable to claim input tax credit (ITC) which works out to Rs.3,82,08,278.53 in Form TRAN-1.

4. The Petitioner states that it uploaded its claim for ITC on account of

unsold stock as on 30th June 2017 in Form TRAN 1 on 10th October, 2017. A copy of the screen-shot of Form TRAN-1 uploaded by the Petitioner on the web portal of the Respondents is annexed as Annexure-P1. It is stated that consequently the Petitioner adjusted the tax credit against its output tax liability in Form GSTR-3B for the month of October 2018 filed on 24th March 2018.

5. Subsequently, the Petitioner received the impugned email dated 31st August 2018 stating that the Petitioner had availed excess ITC- which is recoverable from the Petitioner along with interest and penalty. The Petitioner states that on visiting the concerned officer of the Respondents, the Petitioner was directed to reverse the claim of ITC or suffer consequences of interest and penalty. The Petitioner accordingly reversed the ITC claimed in the returns for the months of July 2018 and August 2018 filed on 30th October 2018 and 27th November 2018.

6. The Petitioner claims that it started following up the matter with GST helpdesk and the authorized representative of the Petitioner made personal visits to the office of the Respondents. On 20th March 2019, the Petitioner received an email from GST helpdesk stating that issue has been resolved. However, the ITC claimed by the Petitioner was not reflected in the electronic credit ledger maintained by the Respondents. Accordingly, the Petitioner made a representation on 28th March 2019 with the Respondents. With no response forthcoming, the present petition was filed.

7. Learned counsel for the Petitioner points out that in the present case, the

eligibility of the Petitioner to claim ITC has not been doubted by the Respondents. However, for no fault of the Petitioner, despite filing the form GST TRAN-1 claiming ITC in time, it was compelled to reverse the claim and this was no longer reflected in its electronic ledger.

8. As pointed out in earlier orders of this Court, there appear to be technical errors or technical glitches of various kinds in the GST system, which is still in the 'trial and error' phase. There is merit in the contention of the Petitioner that in its case, if it was not able to even connect with the server, then at the end of the Respondents, the fact of a failed attempt at filing a return may not even be registered on the system. Added to this is the fact that the Petitioner's eligibility to claim CGST input in the sum of Rs.3,82,08,278.53 has not been disputed by the Respondents in their reply.

9. As observed by this Court in several orders i.e. in ***Bhargava Motors v. Union of India 2019 SCC OnLine Del 8474***, ***Kusum Enterprises Pvt. Ltd. v. Union of India*** [WP(C) 7423/2019] and ***Sanko Gosei Technology India Pvt. Ltd. v. Union of India & Ors.*** [WP(C) 7335/2019], the entire GST system is still in a trial and error phase and it will be too much of a burden to place on the Assesseees to expect them to comply with the requirement of the law where they are unable to even connect with the system on account of network failures or other failures.

10. The Court therefore, directs that the Respondents to immediately process the Petitioner's representation dated 28th March 2019 and either reflect the ITC claim of the Petitioner in the electronic credit ledger or communicate to

the Petitioner the reasons for its inability to do so on or before 13th September 2019. If the Petitioner is aggrieved by such decision, it will be open to the Petitioner to seek legal remedies that may be available to it in accordance with law.

11. The writ petition and application are disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 20, 2019

abc