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

\+ **W.P.(C) 8970/2019**

THE TYRE PLAZA ..... Petitioner

Through: Mr. Puneet Agrawal and Mr. Gaurav Gupta, Advocates

Versus

UNION OF INDIA & ORS. .... Respondents

Through: Mr. Vivek Goyal, CGSC with Mr. Ram Kishan Kumar, Advocate for UOI
Mr. Harpreet Singh, Senior Standing Counsel with Ms. Shivani Mathur for R-2&R-5

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% 20.08.2019

CM APPL. 37003/2019 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 8970/2019 & CM APPL. 37002/2019(stay)

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 transitional credit under DVAT Act and input tax credit which works out to Rs.65,03,389/-, in Form TRAN–1.

4. Learned counsel for the Petitioner points out that in the present case, the eligibility of the Petitioner to claim the input tax credit (ITC) has not been doubted by the Respondents. However, for no fault of the Petitioner, despite repeated attempts, it could not file the form GST TRAN–1 claiming the tax credit. Learned counsel for the Petitioner points out that after 27th December 2017, the GST Network disallowed any request for online submission of Form TRAN-1 on the GST Portal. As a result, credit claim of Rs.65,03,389/- was still outstanding and the TRAN-1 could not be submitted.

5. The Petitioner states that after this Court in certain similar petitions passed orders directing the Respondents to accept manually filed TRAN-1 forms, where it was not possible to open the portal, the Petitioner too filed the TRAN-1 form manually on 31st May 2019 with its jurisdictional officer at Ward-86, claiming ITC amounting to Rs.36,09,147/-, duly disclosing the same in column 7(a) of the TRAN-1. The Petitioner also had carry forward of tax credit amounting to Rs.28,94,242/- and duly disclosed the same in column 5 (c) of the TRAN-1. A copy of the above manual application filed with the Jurisdictional ward officer is enclosed with the petition as Annexure P-7.

6. 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 ITC in the sum of Rs.65,03,389/- has not been disputed by the Respondents in their reply.

7. 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 Assessees 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.

8. The Court would urge the ITGRC to review the policy it has adopted in such cases, and acknowledge instances like the present one, where the Petitioners are not able to link with the Portal and therefore, the fact of a technical glitch is not able to be accounted for in the system.

9. The Court therefore, directs that the Respondents to either open the Portal to enable the Petitioner to again file the TRAN-1 Form electronically, failing which they will accept the TRAN–1 Form already filed manually by the Petitioner. The Petitioner's claim shall thereafter be processed in accordance with law.

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

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 20, 2019/*abc*