

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE T.R.RAVI

THURSDAY, THE 04TH DAY OF JUNE 2020 / 14TH JYAISHTA, 1942

W.A.No.511 OF 2020

AGAINST THE JUDGMENT IN WP(C) NO.11424/2019(C) OF THE HIGH COURT
OF KERALA DATED 13.12.2019

APPELLANTS/RESPONDENTS 2,3,5 & 6:

- 1 GOODS AND SERVICES TAX NETWORK,
EAST WING, 4TH FLOOR, WORLD MARK-1,
AEROCITY, NEW DELHI- 110 037.
- 2 GOODS AND SERVICES TAX COUNCIL
5TH FLOOR, TOWER-II, JEEVAN BHARATHI BUILDING,
JANPATH ROAD, CONNAUGHT PLACE, NEW DELHI-110001.
- 3 THE ASSISTANT COMMISSIONER/NODAL OFFICER
CENTRAL TAX AND CENTRAL EXCISE, THRISSUR DIVISION,
THRISSUR-680 011.
- 4 THE DEPUTY COMMISSIONER (TECH)
OFFICE OF THE COMMISSIONER,
CENTRAL TAX AND CENTRAL EXCISE,
CENTRAL REVENUE BUILDING, I.S. PRESS ROAD,
KOCHI-682 018.

BY ADV. SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF EXCISE
AND CUSTOMS

RESPONDENTS/PETITIONER & RESPONDENTS 1 & 4:

- 1 M/S.LEO DISTRIBUTORS,
LEO LOGISTICS PARK, N.H BYEPASS JUNCTION,
KUTTANELLUR, THRISSUR-680 014.
- 2 THE COMMISSIONER OF STATE GST
TAX TOWERS, KILLIPPALAM, KARAMANA P.O.,
THIRUVANANTHAPURAM-695 002.

3 THE NODAL OFFICER
STATE GOODS AND SERVICES TAX DEPARTMENT,
TAX TOWERS, KILLIPPALAM, KARAMANA P.O.,
THIRUVANANTHAPURAM-695 002.

R1 BY ADV.SRI.HARISANKAR V. MENON
BY SENIOR GOVERNMENT PLEADER SRI.V.K.SHAMSUDHEEN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04.06.2020,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

JUDGMENT

K. Vinod Chandran, J.

The Goods and Services Tax Network Pvt. Ltd., G.S.T Council and its Officers are before us in appeal. The impugned judgment was passed in two writ petitions directing the appellants to facilitate filing of GST TRAN-1 Forms electronically by making necessary arrangements in the web portal and in the event of the same being not possible, permitting manual filing of such returns.

2. The returns, subject matter of this appeal, are necessitated for the purpose of claiming input tax credit on and from the appointed day of the enforcement of the Goods and Services Tax Act, 2017 [for brevity, 'the GST Act']; for availing the input credit available prior to the said appointed day. The GST regime subsumes a number of indirect taxes and the transitory provision under the GST Act, Section 140

took care of such un-availed input tax credit available in the earlier regime.

3. The learned Single Judge found that the system log as relied on by the respondents themselves, clearly indicated the attempt made by both the petitioners and the inability to upload the prescribed form within the time limit provided was only due to the system error, that occurred at the hands of the Department, who is responsible for the efficient functioning of their web portal. A substantive benefit of carrying forward the credit by the assessee under the erstwhile regime cannot be denied for reason only of the technical lapse was the reasoning. The instant appeal is filed from only one of the writ petitions, mainly contending that, the subject petitioner, who is the 1st respondent herein, could not upload the prescribed form for reason only of the details having been filled in the wrong column.

4. Learned Standing Counsel for the

Department would take us through Ext.P1 and point out that the details filled up were under Table 7(b) of the GST TRANS-1 Form, which has to be with respect to the eligible duties and taxes under Section 140(5) & 140(7). On a reading of sub-sections (5) & (7) of Section 140, it is clear that they deal with credit of eligible duties and taxes with respect to inputs or input services received on or after the appointed date [sub-section (5)] or those service received prior to the appointed date, with the invoices relating to such services having been received on or after the appointed date [sub-section(7)]. The details entered in the GST TRANS-1 Form in Table 7(b), as evidenced from Exhibit P-1 in the writ petition, are with respect to the credits of eligible duties and taxes available prior to the appointed date. It is hence the return itself was rejected with the specific recital that *"date on which entered in recipient's books of Accounts should be after 01.07.2017"(sic)*. The error

occurred at the hands of the 1st respondent and not the Department, is the compelling argument. The learned Counsel for the appellant as also the respondent have placed before us a number of decisions to support their contentions.

5. Blue Bird Pure Pvt.Ltd. v. Union of India and Others [(2019) 68 GSTR 340 (Delhi)] was concerned with a mistake occurred in the assessee having entered the details in Column 7(d) instead of Column 7(a), which is almost identical to the mistake pointed out in this case. The Division Bench of the High Court of Delhi relied on two decisions of that Court, which highlighted the fact that the transitional provisions are to be applied in the 'trial and error phase'; when there is a switching effected from the old regime to the new. It was found that there was no effective grievance redressal system in place and the error occasioned at the hands of the petitioner was an inadvertent one.

6. In Jay Bee Industries v. Union of India and Others [MANU/HP/1982/2019], the Himachal Pradesh High Court considered the complaint raised by an assessee of having unsuccessfully attempted to submit the prescribed form, due to the system problem/glitches. A number of decisions of various High Courts were cited and followed to allow the claim of the petitioner, permitting submission of the return, even after the prescribed date finding GST to be a new progressive levy, brought in with the ideal of avoiding cascading liability of taxes and enabling seamless flow of tax credit on all eligible inputs (sic).

7. In Brand Equity Treaties Limited and Others v. The Union of India and Others [MANU/DE/1009/2020], the Department had specifically argued that the earlier decisions on the very same issue proceeded on the ground of technical glitches having prevented the assessee from making proper

submission of the prescribed forms. Specific reference was also made to Rule 117(1A), a subsequent incorporation in the GST Rules, by way of grievance redressal. Even the mechanism so introduced restricted the benefit of input tax credit after the prescribed date only to tax payers whose cases are covered by technical glitches, subject to recommendations of the GST Council. The Division Bench read down Rule 117 holding it to be directory in nature, insofar as the prescription of a time limit for transition of input credit and declaring that it could not result in automatic forfeiture of such rights, solely because the credit is not availed in the prescribed period. It was also held that such transitional provision cannot be availed in perpetuity and that the maximum period for availing such provision is within three years. Finding that all the petitioners therein had unsuccessfully attempted to file the prescribed form within the aforesaid period of three years, they were

directed to be facilitated input tax credit by the department.

8. The judgment specifically relied on by the learned Standing Counsel is of a Division Bench of the High Court of Bombay; Nelco Limited v. The Union of India and Others [MANU/MH/0485/2020]. We do not find any application on facts, for reason of the assessee therein having not at all made an attempt to submit the form; which failure was established on the basis of the system log as available with the Department.

9. In the present case, we find that the facts are identical to Blue Bird Pure Pvt.Ltd. [supra]. Therein, while the details were to be filled up in Column 7(a), the assessee had filled up the same in Column 7(d). In the present case, the assessee had filled up the details in Column 7(b), when actually the assessee ought to have done it in Column 7(a). The assessee's eligibility was under Section 140(3), being a dealer in medicines, the

liability to tax under the earlier value added tax regime being on the manufacturer or the first seller in the State. As has been noticed in the various decisions, there arise a number of teething problems in the initial stages of a new regime and the assessee too are not well versed in the ways and means provided in the new enactment and those prescribed by rules; both on the substantive and procedural aspects. The transition from the old regime to the new one as held by the High Court of Delhi in Brand Equity Treaties Limited [supra] poses formidable and unprecedented problems in successful migration, which could be attributed either to the failure of the system as maintained by the Department or the inexperience of the assessee in the ways and means provided by the new regime. The fact that the petitioner/1st respondent had attempted uploading of the form, within the period is more than established by the system log. The rejection of the return so

submitted was due to the wrong table having been filled up, which is not with any ulterior motive; but was only for reason of inadvertence prompted by inexperience.

10. On the above reasoning, respectfully following the persuasive precedents referred above, we do not find any cause for interference with the judgment of the learned Single Judge. We reject the appeal, upholding the judgment as also reaffirming the directions therein.

The writ appeal is dismissed. Parties shall suffer their respective costs.

Sd/-

K. VINOD CHANDRAN,
Judge.

Sd/-

T.R. RAVI,
Judge.

sp/05/06/2020

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P.A.to Judge