IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 17TH DAY OF JANUARY 2020 / 27TH POUSHA, 1941

WP(C).No.5798 OF 2019(Y)

PETITIONER:

POPULAR AUTO DEALERS PVT.LTD.
KUTTUKARAN CENTRE, MAMANGALAM, COCHIN-682025,
REPRESENTED BY ITS M.D. NAVEEN PHILIP.

BY ADVS.
SRI.SUKUMAR NAINAN OOMMEN
SRI.SHERRY SAMUEL OOMMEN
SRI.RAHUL IPE PRASAD
SHRI.JONATHAN PREETHAM PAUL
LAKSHMI SEETHARAMAN

RESPONDENTS:

1 UNION OF INDIA,
REPRESENTED BY SECRETARY, DEPARTMENT OF REVENUE , MINISTRY OF FINANCE, ROOM NO.46, NORTH BLOCK, NEW DELHI-110001.

2 GOODS AND SERVICE TAX NETWORK(GSTN)
THROUGH ITS CHAIRMAN, EAST WING, 4TH FLOOR, WORLD MAR-1, AEROCITY, NEW DELHI-110037.

3 GOODS AND SERVICE TAX COUNCIL,
THROUGH ITS SECRETARY, 5TH FLOOR, TOWER II, JEEVAN BHARATI BUILDING, JANPATH ROAD, CANNAUGHT PLACE, NEW DELHI-110001.

4 THE DEPUTY COMMISSIONER,
DEPARTMENT OF KERALA GOODS AND SERVICE TAX, SPECIAL CIRCLE-II, THEVARA, ERNAKULAM KOCHI-682015.

5 THE NODEL OFFICER FOR STATE GST,
GOODS AND SERVICE TAX DEPARTMENT, KARAMANA, THIRUVANANTHAPURAM, KERALA-695002.

6 COMMISSIONER,
DEPARTMENT OF KERALA STATE GOODS AND SERVICE TAX,
9TH FLOOR, TAX TOWER, KILLIPALAM, KARAMANA P.O,
THIRUVANANTHAPURAM-695002.

R1 BY ADV. SMT.CHANDINI G.NAIR
R2 BY SRI.P.R.SREEJITH,SC,GOODS AND SERVICES TAX NETWORK
R2-3 BY SHRI.P.R.SREEJITH, SC, GSTN

OTHER PRESENT:

SRI.P.VIJAYAKUMAR, ASGI,
SMT.THUSHARA JAMES, GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

W.P.(C)No. 5798 of 2019

Dated this the 17th day of January, 2020

JUDGMENT

The prayers in the above Writ Petition (Civil) are as follows:-

> *"i. Issue a writ of mandamus or any other appropriate writ, order or direction directing the 2nd, 3rd, 4th, 5th and 6th respondent to accept the Petitioner's manual filing of revised FORM GST TRAN-1 and the resultant FORM GST TRAN-2 that may be filed within a period of two weeks.*
> *ii. Issue a writ of mandamus or any other appropriate writ, order or direction directing the 2nd 3rd, 4th 5th and 6th Respondents to do the needful so that the eligible credit in respect of duties covered under the proviso to section 140(3) is reflected in the Petitioner's electronic credit ledger with effect from 01 January 2018;*
> *iii. Issue a writ of mandamus or any other appropriate writ, order or direction quashing Rule 120A of the CGST Rules to the extent it denies a registered person the right to revise the return under From GST TRAN-1 more than once;*
> *iv. Issue a writ of mandamus or any other appropriate writ, order or direction quashing Exhibit P11 notification to the extent it denies registered persons who are affected but not identified, the benefit of the extended date for submitting FORM GST TRAN-1 and FORM GST TRAN-2;*
> *v. Issue a writ of mandamus or any other appropriate writ, order or direction directing the 3rd Respondent to make such necessary recommendations, in light of the present circumstances, to the Government in exercise of its powers under Section 172;"*

2. Heard Sri.Sukumar Nainan Oommen, learned counsel appearing for the petitioner, Sri. T.R. Sreejith, learned Central Government Counsel appearing for

respondents 2 and 3, learned Government Pleader appearing for respondents 4 to 6 and Sri. P.Vijayakumar, learned Asst. Solicitor General appearing for R1 (Union of India).

3. The learned Central Government Counsel appearing for R2 and R3 was earlier requested to get instructions in the matter. Today when the matter was taken up for consideration, Sri. T.R. Sreejith, learned Central Government Counsel appearing for R2 and R3 would submit on the basis of instructions of his parties that the matter in issue raised in this petition is covered by various decisions including the judgment dated 22.7.2019 rendered by the Division Bench of the Delhi High Court in W.P.(C)No.3798/2019 (Reported in Manu/DE/2291/2019, which has been followed by this Court in various judgments including the judgment dated 18.11.2019 in W.P.(C)No.21008/2019, judgment dated 20.12.2019 in W.P.(C)No.34771/2019, judgment dated 14.1.2019 rendered by this Court in W.P.(C)No.609/2019 as modified by the order dated 20.12.2019 in R.P.No.932/2019 in W.P.

(C)No.609/2019 etc. It will be pertinent to refer to the contents in the judgment dated 20.12.2019 rendered by this Court in W.P.(C)No.34771/2019, which read as follows:-

"*The petitioner in this writ petition is an assessee under the Kerala Value Added Tax Act, 2003, who migrated to the GST regime pursuant to the enactment of the Central Goods and Service Tax/ State Goods and Service Tax (CGST/SGST) Act, 2017. The petitioner, consequent to their migration to the GST regime, was entitled to carry forward the tax paid on purchase of goods during the VAT regime to the GST regime and to avail credit under the latter regime. The transition provisions, which govern the transfer of credit under the CGST/SGST Act and Rules are Sections 139 to 143 of the Act and Rule 117 of the SGST Rules. As part of the procedure for the transfer of credit, the petitioners had to file a declaration in Form GST TRAN-1 on or before 27.12.2017 for the purposes of successfully migrating the credit to the GST regime. In this writ petition, the grievance of the petitioner is essentially that, while he attempted to upload the necessary details in the web portal of the GSTN, he was not able to do so because of a technical glitch that was encountered in the system. The request made by him before the respondent authorities under the GST Act also did not meet with any success, and the stand of the respondents was that since the petitioners had not complied with the procedural requirements before the cut-off date prescribed, they could not carry forward the credit, that had accrued to them under the erstwhile regime, into the GST regime. In this writ petition, the communications issued to him by the respondents denying him the facility of transfer of accrued credit are impugned, inter alia, on the contention that the substantial rights available to him under the GST Act cannot be deprived solely on account of a technical lapse that was occasioned at the instance of the respondents.*

2. Through statements filed on behalf of the respondents, it is stated that the complaints with regard to system error and the alleged inability of assessees to upload the necessary details for carrying forward the credit earned by him under the erstwhile regime to the GST regime on or before 27.12.2017, were considered by the respondents, who have the wherewithal to ascertain whether an assessee had in fact made an attempt to log into the system or not. It is stated that system log maintained by the respondents clearly reveals cases where an assessee attempted to log into the system but failed, and also whether or not the inability of the assessee to upload the necessary details was on account of a system error or otherwise. It is stated that inasmuch as the system logs in the instant case reveals that the petitioner had in fact made an attempt to log into the system before 27.12.2017, his case would *be covered by category B2, in the categorization drawn up by the respondents. It is stated that in the case of such assessees, while their attempt at logging in would be recorded by the system, it would have to be established that the inability to upload the details was on account of any system error occasioned at the instance of the respondents. In particular, the case of the petitioner herein is stated as follows:*

> *"It is respectfully submitted that so far as the above Writ petition (GSTIN 32AAECK2911P1ZI) is concerned, the same has already been forwarded by GSTN as per CBIC's Circular dated 03.04.2018 to ITGRC. The case of the petitioner was not approved in 4th ITGRC meeting under category B-2. **As per GST System logs, the Petition saved record in TRAN-1 on 30th Aug. 2017 at 11:57:47 AM. No technical error or technical issues has been observed in GST logs. Further, the Petitioner has successfully saved TRAN-1 only once and did not attempt saving or Filing of TRAN-1 subsequently**. The current status of TRAN-1 is NOT FILED."*

3. I have heard the learned counsel appearing for the petitioner and the learned Standing Counsel appealing for the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that since it is not in dispute that the petitioner herein did attempt to upload the necessary details in the system maintained by the respondents, and it cannot be disputed, based on a perusal of the system log, that the petitioner did attempt to log into the system, the mere fact that the petitioner cannot establish that the inability to upload the required details was on account of a system error that was occasioned by the respondents, cannot be a reason for denying him the substantive benefit of carrying forward the credit earned by him under the erstwhile regime. I also take note of the decision of the Delhi High Court in ***Blue Bird Pure Pvt.Ltd. V. Union of India and Others [(2019) 68 GSTR 340 (Delhi)]****, and the decision of the Himachal Pradesh High Court dated 16.11.2019 in* ***CWP No.2169 of 2018 (Jay Bee Industries Vs. Union of India and Others)****, which take the view that accrued tax credits cannot be denied or varied on account of procedural defects cited by the respondents. In particular, it was noticed in those judgments that the GST system was still in a trial and error phase as far as its implementation was concerned, and there were a large number of dealers approaching the High Court expressing difficulties in filing return, claiming input tax credit etc., through the GST portal. In the said cases, the Writ petitions were allowed* *and a direction was issued to the respondents to permit the petitioners therein to file the TRAN -1 Form, either electronically or manually on or before 31.12.2019 without prejudice to the right of the respondent statutory authorities to verify the genuineness of the claim of the petitioners. Taking cue from the said judgment, and finding that in the instant cases also there is no dispute with regard to the attempt made by the petitioner to log into the system on or before 27.12.2017, I allow this writ petition by quashing the impugned communications, and directing the respondents to permit the petitioner to file their TRAN-1 Forms either electronically or manually on or before 31.12.2019. While the respondents shall attempt to facilitate the filing of these TRAN-1 Forms electronically by making the necessary arrangements in the web portal an insistence on manual filing shall be only in circumstances where the electronic filing is not possible. In either event, the respondents are at liberty to verify the genuineness of the claim of the petitioners and the claim shall not be denied only on the ground that the same was not filed before 27.12.2017.*

*This writ petiti*on is allowed on the above lines."

4. The judgment dated 14.1.2019 rendered by this Court in W.P.(C)No.609/2019 reads as follows:-

"*The petitioner approached this Court seeking a direction to the respondents to accept the petitioner's manual filing of revised FORM GST TRAN-I and the resultant FORM GST TRAN-2 in view of the error in filing the same on account of the technical reasons.*

2. The respondents submitted that they have no objection in allowing the petitioner's request in view of the fact that it was occurred on account of the technical reasons.

3. The petitioner submits that they would submit FORM GST TRAN-I and FORM GST TRAN-2 before the fourth respondent manually and the fourth respondent may be directed to transmit it into electronic credit ledger of the petitioner.

In view of the above, the fourth respondent is directed to accept FORM GST TRAN-I and FORM GST TRAN-2 from the petitioner manually. The petitioner shall submit FORM GST TRAN-I and FORM GST TRAN-2 within one week from the date of receipt of a copy of this judgment. If the petitioner submits FORM GST TRAN-I and FORM GST TRAN-2 within the time as above, the fourth respondent shall accept and transmit it into the electronic credit ledger of the petitioner within a further period of one week.

The writ petition is disposed of as above."

5. Now it is brought to the notice of this Court by both the petitioners as well as R2 and R3 that subsequently the office of the Commissioner, State GST Department, Thiruvananthapuram has issued further instructions as per letter dated 10.12.2019 addressed to the Special Secretary, office of the GST Council Secretariat, Delhi, etc., the operative portion of which reads as follows:-

> *"As the taxpayer filed Tran-1 within the time limit, viz 17.11.2017 providing all the details of input tax to be credited, but by mistake uploaded the details in table 7(d) instead of uploading it in table 7(b), it can be taken as an error apparent on the face of records. Hence, it is a fit case in terms of 32nd GST Council decision regarding extended scope of ITGRC for non-technical issues.*
>
> *In the above circumstances, it is recommended to consider the case of M/s. Popular Dealers Pvt. Ltd. GSTIN 32AADCP6984GIZ8 to allow them to rectify the mistake committed by them while filing the TRAN-1 Form."*

6. In the light of the above said decision of the Commissioner of the State GST Council, this Court has passed order dated 20.12.2019 in R.P.No.932/2019 in W.P.(C)No.609/2019, which reads as follows:-

> *"In the light of the positive recommendation made by the Commissioner of State GST Council, the review petitioner shall be permitted either to manually or electronically upload the revised form GST TRAN-II before 31.12.2019. Respondents 2 and 3 shall comply with this direction."*

7. Taking into account these aspects and the

submission made by the petitioner as well as R2 and R3, it is ordered that in the light of the above said procedure recommendation made by the Commissioner of State GST Council, it is ordered that the review petitioner shall be permitted either to manually or electronically upload the revised form GST Tran-1 and Tran-2, expeditiously and without all delay, at any rate, on any day on or before 28.2.2020.

With these observations and directions, the above Writ Petition (Civil) will stand disposed of.

sd/-
ALEXANDER THOMAS, JUDGE

acd

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE PETITIONER'S REGISTRATION CERTIFICATE UNDER THE KERALA VALUE ADDED TAX ACT, 2003.**
EXHIBIT P2	**TRUE COPY OF THE PETITIONER'S REGISTRATION CERTIFICATE UNDER SERVICE TAX.**
EXHIBIT P3	**TRUE COPY OF PETITIONER'S REGISTRATION CERTIFICATE UNDER CENTRAL GOODS AND SERVICE TAX ACT, 2017/KERALA STATE GOODS AND SERVICE TAX ACT, 2017.**
EXHIBIT P4	**TRUE COPY OF SCREENSHOT OF FORM GST TRAN-1.**
EXHIBIT P5	**TRUE COPY OF THE LIST OF SPARES AND ACCESSORIES AND AUTOMOTIVE PAINTS.**
EXHIBIT P6	**TRUE COPY OF THE NOTIFICATION NO.34/2017 DATED 15/09/2017.**
EXHIBIT P7	**TRUE COPY OF THE AUTO GENERATED RESPONSE TO THE GRIEVANCE RAISED.**
EXHIBIT P8	**TRUE COPY OF THE PETITIONER'S ELECTRONIC CREDIT LEDGER.**
EXHIBIT P9	**TRUE COPY OF THE CIRCULAR NO.39/13/2018-GST DATED 03/04/2018.**
EXHIBIT P10	**TRUE COPY OF THE APPLICATION DATED 26/09/2018 BEFORE THE 5TH RESPONDENT.**
EXHIBIT P11	**TRUE COPY OF THE NOTIFICATION NO.48/2018 CENTRAL TAX DATED 10/09/2018.**