

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 13TH DAY OF DECEMBER 2019 / 22ND AGRAHAYANA, 1941

WP(C).No.11424 OF 2019(C)

PETITIONER:

LEO DISTRIBUTORS
LEO LOGISTICS PARK, N.H.BYEPAAS JUNCTION, KUTTANELLUR,
THRISSUR-680014. REPRESENTED BY ITS CEO, SAJAN
GANAPATHY, AGED 45, S/O.T.M.GANAPATHY.

BY ADVS.
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON
SMT.K.KRISHNA

RESPONDENTS:

- 1 THE COMMISSIONER OF STATE GST
TAX TOWERS, KARAMANA, KILLIPPALAM, THIRUVANANTHAPURAM-
695002.
- 2 GOODS AND SERVICES TAX NETWORK PVT.LTD.,
EAST WING, 4TH FLOOR, WORLD MARK-1, AEROCITY, NEW
DELHI-110037, REPRESENTED BY ITS MANAGING DIRECTOR.
- 3 GOODS AND SERVICE TAX COUNCIL,
5TH FLOOR, TOWER-II, JEEVAN BHARATI BUILDING, JANPATH
ROAD, CONNAUGHT PLANCE, NEW DELHI-110001 REPRESENTED BY
ITS CHAIRMAN.
- 4 THE NODAL OFFICER,
STATE GST DEPARTMENT, TAX TOWERS, KARAMANA,
THIRUVANANTHAPURAM-695002.
- 5 THE ASST. COMMISSIONER/NODAL OFFICER,
CENTRAL GST AND CENTRAL EXCISE, THRISSUR DIVISION,
THRISSUR-680001.
- 6 THE DEPUTY COMMISSIONER (TECH)
OFFICE OF THE COMMISSIONER, CENTRAL TAX AND CENTRAL
EXCISE, CENTRAL REVENUE BUILDING, IS PRESS ROAD, KOCHI-
682018

R2 BY SRI.P.R.SREEJITH,SC,GOODS AND SERVICES TAX
NETWORK
R2-3, R5-6 BY SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF
EXCISE AND CUSTOMS
R3 BY SRI.M.A.VINOD, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13.12.2019, ALONG WITH WP(C).18385/2019(W), THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP (C) .No.11424 OF 2019 (C)
&
WP (C) .No.18385 OF 2019 (W)

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 13TH DAY OF DECEMBER 2019 / 22ND AGRAHAYANA, 1941

WP (C) .No.18385 OF 2019 (W)

PETITIONER:

TING TONG INTERNATIONAL PVT.LTD.
115, PRABHA NIVAS, VECHOOR P.O., VAIKOM, KOTTAYAM-
686144, REPRESENTED BY ITS MANAGING DIRECTOR.

BY ADVS.
SRI.GEORGE POONTHOTTAM (SR.)
SMT.NISHA GEORGE

RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT, MINISTRY
OF FINANCE, DEPARTMENT OF REVENUE, GOVERNMENT OF
INDIA, NORTH BLOCK, NEW DELHI-110001.
- 2 GOODS AND SERVICE TAX COUNCIL,
5TH FLOOR, TOWER-II, JEEVAN BHARATI BUILDING, JANPATH
ROAD, CONNAUGHT PLACE, NEW DELHI-110001, REPRESENTED
BY ITS CHAIRMAN.
- 3 GOODS AND SERVICES TAX NETWORK PVT. LTD.,
EAST WING, 4TH FLOOR, WORLD MARK-I, AEROCITY, NEW
DELHI-110037, REPRESENTED BY ITS MANAGING DIRECTOR.
- 4 THE COMMISSIONER OF STATE GST,
TAX TOWERS, KARAMANA, KILLIPALAM, THIRUVANANTHAPURAM-
695002.
- 5 THE DEPUTY COMMISSIONER (TECH),
OFFICE OF THE COMMISSIONER, CENTRAL TAX AND CENTRAL
CENTRAL EXCISE, CENTRAL REVENUE BUILDING, I.S.PRESS
ROAD, KOCHI-682018.
- 6 THE NODAL OFFICER FOR CENTRAL GST,
GOODS AND SERVICES TAX DEPARTMENT, KARAMANA,

WP(C) .No.11424 OF 2019 (C)
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THIRUVANANTHAPURAM-695002.

- 7 THE NODAL OFFICER FOR STATE GST,
GOODS AND SERVICES TAX DEPARTMENT, KARAMANA,
THIRUVANANTHAPURAM-695002.
- 8 PRINCIPAL NODAL OFFICER,
OFFICE OF THE COMMISSIONER, CENTRAL TAX AND CENTRAL
EXCISE, CENTRAL REVENUE BUILDING, I.S.PRESS ROAD,
KOCHI-682018.

R1, R5-6, R8 BY SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF
EXCISE AND CUSTOMS
R1-2 BY SRI.KRISHNADAS P.NAIR, CGC
R3 BY SRI.P.R.SREEJITH,SC,GOODS AND SERVICES TAX
NETWORK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13.12.2019, ALONG WITH WP(C).11424/2019, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

JUDGMENT

As both these writ petitions involve a common issue they are taken up for consideration together and disposed by this common judgment.

2. The petitioners in both these Writ Petitions were assesses 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 petitioners, consequent to their migration to the GST regime, were 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 both these Writ Petitions, the grievance of the petitioners is essentially that, while they attempted to upload the necessary details in the web portal of the GSTN, they were not able to do so because of a

technical glitch that was encountered in the system. The request made by them 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 these Writ petitions, the communications issued to them by the respondents denying them the facility of transfer of accrued credit are impugned, *inter alia*, on the contention that the substantial rights available to them under the GST Act cannot be deprived solely on account of a technical lapse that was occasioned at the instance of the respondents.

3. Through statements filed on behalf of the respondents, it is stated that the complaints with regard to system error and the alleged inability of assesseees to upload the necessary details for carrying forward the credit earned by them 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 petitioners had in fact made an attempt to log into the system before 27.12.2017, their 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.

4. I have heard the learned counsel appearing for the petitioners and the learned Standing Counsel appealing for the respondents.

5. 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 petitioners 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 petitioners did attempt to log into the system, the mere fact that the petitioners 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 them the substantive benefit of carrying forward the credit earned by them 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

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petitioners to log into the system on or before 27.12.2017, I allow these Writ petitions by quashing the impugned communications, and directing the respondents to permit the petitioners 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.

These Writ Petitions are allowed on the above lines.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

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APPENDIX OF WP (C) 11424/2019

PETITIONER'S/S EXHIBITS:

EXHIBIT P1 COPY OF SCREENSHOT OF THE WEB PAGE WITH
STATEMENT OF STOCK DETAILS OF THE PETITIONER

EXHIBIT P2 COPY OF E-MAIL SENT BY THE PETITIONER TO THE
GST HELPDESK DATED 27.12.2017

EXHIBIT P3 COPY OF REPLY E-MAIL ISSUED BY THE GST
HELPDESK TO THE PETITIONER

EXHIBIT P4 COPY OF JUDGMENT IN WP (C)NO.24553/18 OF THIS
HON'BLE COURT DATED 23.07.2018

EXHIBIT P5 COPY OF LETTER SUBMITTED BY THE PETITIONER
BEFORE THE 5TH RESPONDENT DATED 12.09.2018

EXHIBIT P6 COPY OF LETTER ISSUED BY THE 6TH RESPONDENT
DATED 10.09.2018

EXHIBIT P7 COPY OF REPLY SUBMITTED BY THE PETITIONER
BEFORE THE 6TH RESPONDENT DATED 19.09.2018

EXHIBIT P8 COPY OF LETTER ISSUED BY THE 6TH RESPONDENT
TO THE PETITIONER DATED 28.09.2018

EXHIBIT P9 COPY OF LETTER ISSUED BY THE 6TH RESPONDENT
TO THE PETITIONER DATED 20.03.2019

RESPONDENTS EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

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APPENDIX OF WP(C) 18385/2019

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE VAT REGISTRATION DATED 01.04.2017.
EXHIBIT P2	TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER ISSUED UNDER THE CGST ACT, 2017.
EXHIBIT P3	TRUE COPY OF THE CERTIFICATE OF IMPORTER-EXPORTER CODE ISSUED TO THE PETITIONER BY THE OFFICE OF THE JT. DIRECTOR GENERAL OF FOREIGN TRADE.
EXHIBIT P4	TRUE COPY OF THE E-MAIL COMMUNICATION DATED 25.08.2017.
EXHIBIT P5	TRUE COPY OF THE SCREEN SHOT OF FORM GST TRAN-1 THAT THE PETITIONER TRIED TO SUBMIT AS EARLY AS ON 2017.
EXHIBIT P6	TRUE COPY OF THE E-MAIL DATED 22.12.2017 AND 09.01.2018.
EXHIBIT P7	TRUE COPY OF THE LETTER DATED 02.01.2018 ADDRESSED TO THE OFFICE, GOODS AND SERVICE TAX DEPT., KOTTAYAM.
EXHIBIT P8	TRUE COPY OF THE LETTER DATED 02.01.2018 ADDRESSED TO THE OFFICE, GOODS AND SERVICE TAX DEPT., PALA.
EXHIBIT P9	TRUE COPY OF THE LETTER DATED 02.01.2018 ADDRESSED TO THE OFFICE, GOODS AND SERVICE TAX DEPT., VAIKOM.
EXHIBIT P10	TRUE COPY OF THE ACKNOWLEDGMENT RECEIPT DATED 04.01.2018.
EXHIBIT P11	TRUE COPY OF THE ACKNOWLEDGMENT RECEIPT DATED 04.01.2018.
EXHIBIT P12	TRUE COPY OF THE JUDGMENT DATED 30.07.2018 IN

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W.P. (C) NO.25531/2018 PASSED BY THIS HON'BLE
COURT.

EXHIBIT P13

TRUE COPY OF THE COMMUNICATION DATED
08.08.2018 ISSUED BY THE PETITIONER.

EXHIBIT P14

TRUE COPY OF THE E-MAIL COMMUNICATION DATED
07.09.2018 ISSUED FROM THE 6TH RESPONDENT.

EXHIBIT P15

TRUE COPY OF THE COMMUNICATION DATED
10.09.2018.

EXHIBIT P16

TRUE COPY OF THE COMMUNICATION DATED
20.03.2019 ISSUED BY THE JOINT COMMISSIONER.

EXHIBIT P17

COPY OF THE SCREE SHOT OF ONLINE PORTAL
UPDATED AS ON 22.05.2019 WHICH EVIDENCE THE
FILING OF FORM GST TRAN-1 BY THE PETITIONER.

EXHIBIT P18

TRUE COPY OF THE JUDGMENT DATED 14.01.2019 IN
W.P. (C) NO.609/2019 PASSED BY THIS HON'BLE
COURT.

RESPONDENTS EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

