

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.27940 OF 2019(N)

PETITIONER:

A.F.BABU
AGED 57 YEARS
PROPRIETOR, BRIGHT AUTO AGENCIES, SANKARAMANGALAM,
PALAKKAD DISTRICT-679303

BY ADV. SRI.PRAMJI PAUL VAZHAPPILLY

RESPONDENTS:

- 1 UNION OF INDIA
DEPARTMENT OF REVENUE, CBEC, REPRESENTED BY ITS
SECRETARY TO GOVERNMENT, MINISTRY OF FINANCE, NEW
DELHI-110 001
 - 2 GOODS AND SERVICES TAX COUNCIL,
OFFICE OF GST COUNCIL SECRETARIAT, 5TH FLOOR, TOWER-II,
JEEVAN BHARATH BUILDING, JANPATH, CONNAUGHT PLACE, NEW
DELHI-110 001, REPRESENTED BY SECRETARY TO GST COUNCIL.
 - 3 THE GOODS AND SERVICES TAX NETWORK PVT. LTD.,
EAST WING, 4TH FLOOR, WORLD MNARK-I, AEROCITY, NEW
DELHI-110 003, REPRESENTED BY ITS MANAGING DIRECTOR.
 - 4 THE PRINCIPAL NODAL OFFICER,
THIRUVANANTHAPURAM ZONE, OFFICE OF THE COMMISSIONER OF
CENTRAL TAX AND CENTRAL EXCISE, CENTRAL REVENUE
BUILDING, IS PRESS ROAD, KOCHI-682 018
 - 5 THE STATE GST OFFICER,
PATTAMBI, PALAKKAD-679 303
- R1 BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA
R4 BY SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF EXCISE AND
CUSTOMS

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

WP(C) .No.27940 OF 2019(N)
&
WP(C) .No.28343 OF 2019(P)

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.28343 OF 2019(P)

PETITIONER:

NAGA DISTRIBUTORS
GROUND FLOOR, 3/75, KOCHUPURACKAL BUILDINGS, KUTTOOR,
VALLAMKULAM ROAD, THIRUVALLA 689 106
REPRESENTED BY ITS AUTHORISED SIGNATORY
SRI ANIL KUMAR V

BY ADVS.
SRI.K.S.HARIHARAN NAIR
SMT.HARIMA HARIHARAN

RESPONDENTS:

- 1 UNION OF INDIA
THROUGH ITS SECRETARY (REVENUE)
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, GOVERNMENT
OF INDIA, NORTH BLOCK, NEW DELHI 110 001
- 2 THE PRINCIPAL SECRETARY,
FINANCE (GST WING)
FINANCE (REV-1) DEPARTMENT 4TH LEVEL, A WING, DELHI
SECRETARIAT, I.P ESTATE, NEW DELHI 110 002
- 3 GST COUNCIL,
THROUGH ITS CHAIRPERSON, DEPARTMENT OF FINANCE,
NORTH BLOCK, NEW DELHI 110 001
- 4 GOODS AND SERVICES TAX NETWORK
THROUGH ITS CHAIRMAN, EAST WING , 4TH FLOOR,
WORLD MARK-1
AEROCITY, NEW DELHI 110 037
- 5 THE COMMISSIONER,
GOODS AND SERVICES TAX DEPARTMENT, KARAMANA,
THIRUVANANTHAPURAM, KERALA 695 002
- 6 THE NODAL OFFICER FOR STATE GOODS AND SERVICES TAX
DEPARTMENT,

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&
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KARAMANA, THIRUVANANTHAPURAM, KERALA 695 002

7 THE NODAL OFFICER
CENTRAL GOODS AND SERVICES TAX DEPARTMENT, KARAMANA,
THIRUVANANTHAPURAM, KERALA 695 002

8 THE JOINT COMMISSIONER ,
PRINCIPAL NODAL OFFICER, CENTRAL BOARD OF INDIRECT
TAXES AND CUSTOMS, CENTRAL REVENUE BUILDINGS,
ERNAKULAM 682 018

R1-3 BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA
R7-8 BY SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF EXCISE
AND CUSTOMS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13.12.2019, ALONG WITH WP(C).27940/2019, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP (C) .No. 27940 OF 2019 (N)
&
WP (C) .No. 28343 OF 2019 (P)

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 they had come across a press release by the GST Council, which indicated that the last date for uploading the details in the GST portal for the purposes of carrying forward the accumulated credit from the erstwhile regime was extended up to 31.12.2017.

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Relying on the said press release, the petitioners sought a clarification from the GST Net Work, on finding that the web portal had closed by 27.12.2017, as to when the portal would re-open again for them to upload the necessary details for migration of the credit to the GST regime. The respondents however clarified that inasmuch the petitioners had not made any attempt to log into the system before 27.12.2017 their request for migration of credit could not be accepted. 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

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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 reveal that the petitioners had not 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, which are cases where the system log indicates that the assessee had not made any attempt to log into the system before 27.12.2017.

4. I have heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing 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, while it is a fact that the petitioners did not make an attempt to log into the system before 27.12.2017, the cut-off date prescribed by the respondents for uploading the TRAN-1 Form to the web portal, I find that the petitioners were guided by a press release of the GST Council, which suggested that they could upload the statutory form on any date before 31.12.2017. Placing reliance on the said press release, the petitioners had submitted an E-mail on 30.12.2017, seeking a clarification as to when the web

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portal would open again so as to upload their respective TRAN-1 Forms. The said E-mail, in my view, suggests that the petitioners would have attempted to upload the TRAN-1 Form had the web portal remained open till 31.12.2017 as indicated in the press release of the GST Council. No doubt, it is now clarified by the learned Standing Counsel for the respondents that the press release itself was a mistaken one, in that there was no decision to extend the time limit till 31.12.2017. I find, however, that the petitioner assessee cannot be deprived of the substantive benefit under the GST Act merely on account of a technical procedure insisted upon by the respondents. This is more so when they had valid reason to assume that the facility to upload the necessary TRAN-1 Form was available till 31.12.2017. I also take note of the judgment of the Delhi High Court in **Amon Motors Vs. Union of India and Ors** [W.P.(C).No.2478/2019 decided on 21.11.2019], where in almost similar circumstances, the Court permitted the petitioners therein to file a Form TRAN-1 electronically on or before a specified date. Taking cue from the said judgment, I deem it appropriate to allow these Writ petitions by quashing the impugned communications and directing the respondents to either open the online portal so as to enable the petitioners to file the Form TRAN-1 electronically or to accept the same 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

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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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&
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APPENDIX OF WP(C) 27940/2019

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE CERTIFICATE OF REGISTRATION OBTAINED BY THE PETITIONER UNDER GST ACT.
- EXHIBIT P2 TRUE COPY OF PRESS REPORT SHOWING RECOMMENDATIONS OF 3RD MEETING OF THE 1ST RESPONDENT COUNCIL PUBLISHED BY THE PRESS INFORMATION BUREAU, GOVERNMENT OF INDIA, MINISTRY OF FINANCE IN ITS OFFICIAL WEBSITE DATED 10.11.2017.
- EXHIBIT P3 TRUE COPY OF EMAIL SENT BY THE PETITIONER ON 30.12.2017 TO THE HELP DESK DATED 30.12.2017.
- EXHIBIT P4 TRUE COPY OF REPLY MAIL RECEIVED BY THE PETITIONER ON 3.1.2018.
- EXHIBIT P5 TRUE COPY OF EMAIL REQUEST SENT BY THE PETITIONER TO THE 1ST COUNCIL DATED 15.1.2018.
- EXHIBIT P6 TRUE COPY OF EMAIL REQUEST SENT BY THE PETITIONER FROM THE CBEC MITRA HELP DESK ON 16.1.2018
- EXHIBIT P7 TRUE COPY OF THE JUDGMENT DATED 11.7.2018 OF THIS HON'BLE COURT IN W.P. (C) NO. 5032 OF 2018.
- EXHIBIT P8 TRUE COPY OF APPLICATION MADE TO THE DEPUTY COMMISSIONER, CENTRAL TAX AND CENTRAL EXCISE,, PALAKKAD DATED 27.7.2018.
- EXHIBIT P9 TRUE COPY OF THE LETTER DATED 28.11.2018 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER DATED 28.11.2018.
- EXHIBIT P10 TRUE COPY OF REPLY MADE TO THE 4TH RESPONDENT BY THE PETITIONER ON 6.12.2018.
- EXHIBIT P10 A TRUE COPY OF THE ACKNOWLEDGMENT ISSUED FROM THE OFFICE OF THE 4TH RESPONDENT WHILE ACCEPTING EXT. P10.
- EXHIBIT P11 TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF GUJARAT IN SPECIAL CIVIL APPLICATION NOS. 5758 OF 2019 AND CONNECTED CASES DATED

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6.9.2019.

EXHIBIT P12

TRUE COPY OF THE ORDER ISSUED BY THE 4TH
RESPONDENT.

RESPONDENTS EXHIBITS:

ANNEXURE R4 (A) : TRUE COPY IF THE LETTER DATED 8.8.2019 IN FOR
COMMUNICATING THE 6TH ITGRC DECISION IN THE PETITIONER'S CASE.

//TRUE COPY//

P.A TO JUDGE

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APPENDIX OF WP(C) 28343/2019

PETITIONER'S/S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE PROVISIONAL CERTIFICATE OF
REGISTRATION UNDER THE ORDINANCE DATED 21-09-2017

EXHIBIT P2 TRUE COPY OF THE SPECIMEN INVOICE DATED 26-06-2017

EXHIBIT P2 A TRUE COPY OF THE SPECIMEN INVOICE DATED 26-06-2017

EXHIBIT P3 TRUE COPY OF THE REPRESENTATION FILED BY THE
PETITIONER DATED 30-12-2017

EXHIBIT P3 A TRUE COPY OF THE ACKNOWLEDGMENT OF EXT P3 DATED 01-
01-2018 HAS BEEN ISSUED BY THE GST NETWORK

EXHIBIT P3 B TRUE COPY OF THE SCREENSHOT OF REMINDERS AND FOLOWUP
MADE BY THE PETITIONER

EXHIBIT P3 C TRUE COPY OF THE SCREENSHOT OF REMINDERS AND FOLLOWUP
MADE BY THE PETITIONER

EXHIBIT P3 D TRUE COPY OF THE SCREENSHOT OF REMINDERS AND FOLLOWUP
MADE BY THE PETITIONER.

EXHIBIT P4 TRUE COPY OF THE JUDGEMENT DATED 28-06-2018 IN W.P(C)
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EXHIBIT P5 A SPECIMEN COPY OF A LETTER SENT BY THE PETITIONER TO
THE 6TH RESPONDENT DATED 16-06-2018

EXHIBIT P5 A A SPECIMEN COPY OF A LETTER SENT BY THE PETITIONER TO
THE 7TH RESPONDENT DATED 16-06-2018

EXHIBIT P5 B A SPECIMEN COPY OF A LETTER SENT BY THE PETITIONER TO
THE 8TH RESPONDENT DATED 24-08-2019

EXHIBIT P6 A SPECIMEN COPY OF COMMUNICATION ISSUED BY THE 7TH
RESPONDENT DATED 14-06-2019

EXHIBIT P7 JUDGMENT DATED 06-09-2019 IN M/S SIDDHARTH
ENTERPRISES V. NODAL OFFICER BY GUJARAT HIGH COURT.
RESPONDENTS EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

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